TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 272.

THE AMERICAN LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

THE TOWN OF BRUCE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED OCTOBER 15, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 272.

THE AMERICAN LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

THE TOWN OF BRUCE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Bond for costs	2	1
Precipe	3	1
Writ of summons	3	2
Declaration	6	3
Time to plead extended	26	17
Time to plead extended	27	17
Leave to amend declaration	27	18
Plea	28	18
Replication	36	21
Demurrer to replication	37	22
Judgment	39	22
Bond	40	23
Clerk's certificate	42	23
Writ of error	43	24
Citation	44	24
Assignment of errors	46	25

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court rooms in the city of Chicago, in the district aforesaid, before the judges thereof, on Saturday, the twenty-seventh day of July, in the year of our Lord one thousand eight hundred and seventy-eight, and of our Independence the one hundred and third.

WILLIAM H. BRADLEY, *Clerk.*

THE AMERICAN LIFE-INSURANCE COMPANY
v.
THE TOWN OF BRUCE. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-third day of April, A. D. 1877, came the said plaintiff, The American Life-Insurance Company, by Thomas P. Bonfield, esq., its attorney, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, its bond for costs and
2 precipe for a writ of summons against said defendant in said entitled cause; which said bond for costs and precipe are respectively in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court of the May term, A. D. 1877.

THE AMERICAN LIFE-INSURANCE COMPANY
v.
THE TOWN OF BRUCE. } Assumpsit. Damages, $4,000.00.

I, Julius S. Taylor, do hereby enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by it, I hereby agree and stipulate that execution may issue against my property for any costs taxed against said plaintiff.

Dated this the 23 day of April, A. D. 1877.

JULIUS S. TAYLOR.

(Endorsed:) Filed Apr. 23d, 1877. Wm. H. Bradley, cl'k.

3 *Præcipe.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court of the May term, A. D. 1877.

THE AMERICAN LIFE-INSURANCE COMPANY
vs.
THE TOWN OF BRUCE } Assumpsit. Damages, $4,000.00.

Issue a summons against said defendant in the above-entitled cause. April 23d, 1877.

THO. P. BONFIELD,
Pl'ff's Att'y.

To clerk of the circuit court of the U. S. in North. Dis. of Illinois.

(Endorsed:) Filed Apr. 23, 1877. Wm. H. Bradley, cl'k.

And on the same day, to wit, the 23d day of April, A. D. 1877, a writ of summons issued out of said clerk's office against said defendant in said entitled cause; which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Writ of summons.

Circuit court of the United States of America, northern district of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon The Town of Bruce, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of May next, to answer unto The American Life-Insurance Company of a plea of trespass on the case upon promises, to its damage, as it is alleged, of six thousand dollars; and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 23d day of April, in the year of our Lord one thousand eight hundred and seventy-seven, and of our Independence the 101st year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Ad damnum increased to six thousand dollars by order of court, July 23d, 1878.

Special deputy's return.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Know all men by these presents that I have appointed, and by these presents do appoint, James Foster my true and lawful deputy to execute the annexed writ—The American Life-Ins. Co. vs. The Town of Bruce, and to make return of the execution hereof according to law.

JESSE S. HILDRUP, [SEAL.]
United States Marshal for the Northern District of Illinois.

I have served the annexed writ in the following manner, to wit, by delivering a true copy thereof to John Lomaswry, supervisor of said town therein named, on the 25 day of April, A. D. 1877.

JESSE S. HILDRUP,
United States Marshal,
By JAMES FOSTER,
Special Deputy.

James Foster, being duly sworn, deposes and says that he served the annexed writ as stated in the foregoing return, and that the expense returned by him in addition to the fees was actually incurred, and that the same is according to law. Sworn to before me this twenty-sixth day of April, A. D. 1877.

[SEAL.]

H. N. RYON,
Notary Public.

(Endorsed:) Filed April 30th, A. D. 1877. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 26th day of April, A. D. 1877, said
6 plaintiff, by its attorney, filed in said clerk's office its declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court of the May term, A. D. 1877.

The American Life Insurance Company, a citizen of the State of Pennsylvania, plaintiff in this suit, by T. P. Bonfield, its attorney, comes and complains of the Town of Bruce, a citizen of the State of Illinois, defendant in this suit, who is summoned, &c., of a plea of trespass on the
7 case on promises. For that whereas the said defendant heretofore, to wit, on the first day of April, A. D. 1877, at the county of La Salle, at within the northern district of the State of Illinois, became indebted and unto the plaintiff in a large sum of money, to wit, six thousand dollars for money before that time lent and advanced to and paid, laid out and expended for said defendant by said plaintiff at said defendant's request; and also in like sum of money before that time had and received by said defendant to and for the use of said plaintiff; and also in the like sum for goods, wares, and merchandise, before that time sold and delivered by said plaintiff to said defendant, at like special instance and request; and also in the like sum for the labor, care, and, diligence of said plaintiff before that time done and performed by said plaintiff
7 for said defendant, and at the like instance and request of said defendant; and also in the like sum for money found to be due from the defendant to the plaintiff on an account then and there stated between them, and being so indebted said defendant in consideration thereof then and there undertook and promised to pay said plaintiff said last-mentioned sum of money when thereunto afterwards requested.

Yet the said defendant not regarding its said promises and undertakings, but continuing, &c., although often requested so to do, has not paid said plaintiff either of said sums of money or any part thereof, but so to do has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of said plaintiff of six thousand dollars, and therefore it brings suit, &c.

THO. P. BONFIELD,
Plaintiff's Attorney.

8 *Copy of instruments and accounts sued upon.*

$100.00.] Interest warrant. [No. 1.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer on the 1st day of Dec., A. D. 1876, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL, *Supervisor.*

(Across the face:) 6.

$100.00.] Interest warrant. [No. 2.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer on the 1st day of Dec., A. D. 1876, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL, *Supervisor.*

(Across the face:) 6.

$100.00.] Interest warrant. [No. 3.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer on the 1st day of Dec., A. D. 1876, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL, *Supervisor.*

(Across the face:) 6.

$100.00.] Interest warrant. [No. 4.

Town of Bruce.

9 The town of Bruce, State of Illinois, will pay to the bearer on the 1st day of Dec., A. D. 1876, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

(Across the face:) 6.

$100.00.] Interest-warrant. [No. 5.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer on the 1st

day of Dec., A. D. 1876, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

(Across the face:) 6.

$100.00.] Interest-warrant. No. 6.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer on the 1st day of Dec., A. D. 1876, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

(Across the face:) 6.

$100.00.] Interest-warrant. No. 7.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer on the 1st day of Dec., A. D. 1876, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

(Across the face:) 6.

$100.00.] Interest-warrant. No. 8.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer on the 1st day of Dec., A. D. 1876, one hundred dollars, at the Fourth National Bank, New York, being one year's on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

(Across the face:) 6.

$100.00.] Interest warrant. No. 9.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st

day of Dec., A. D. 1876, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

(Across the face:) 6.

$100.00.] Interest warrant. [No. 10.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer on the 1st day of Dec., A. D., 1876, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

(Across the face:) 6.

11 $100.00.] Interest warrant. [No. 1.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer on the 1st day of Dec., A. D. 1875, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

(Across the face:) 5.

$100.00.] Interest warrant. [No. 2.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer on the 1st day of Dec., A. D. 1875, one hundred dollars at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

(Across the face:) 5.

$100.00.] Interest warrant. [No. 3.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer on the 1st day of Dec., A. D., 1875, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

(Across the face:) 5.

$100.00.] Interest warrant. [No. 4.

Town of Bruce.

12 The town of Bruce, State of Illinois, will pay to the bearer on the 1st day of Dec., A. D., 1875, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

(Across the face:) 5.

$100.00.] Interest warrant. [No. 5.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer on the 1st day of Dec., A. D., 1875, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

(Across the face:) 5.

$100.00.] Interest warrant. [No. 6.

Town of Bruce.

The town of Bruce, State of Illinois, will pay the bearer on the 1st day of Dec., A. D. 1875, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

(Across the face:) 5.

$100.00.] Interest warrant. [No. 1.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer on the 1st day of Dec., A. D. 1874, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond num-
13 bered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 2

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1874, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 3

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1874, one hundred dollars, at the Fourth National Bank, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 4.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1874, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

14 $100.] Interest warrant. [No. 5.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1874, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 6.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st

day of Dec., A. D. 1874, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 7.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1874, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 8.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1874, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 9.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1874, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 10.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1874, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 1.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1873, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond
16 numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 2.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1873, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 3.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1873, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 4.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1873, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

17 $100.] Interest warrant. [No. 5.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1873, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 6.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1873, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 7.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1873, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 8.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on
18 the 1st day of Dec., A. D. 1873, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 9.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1873, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 10.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1873, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 1.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1872, one hundred dollars, at the Fourth National Bank of New York, being one year's interest on the bond numbered as above.

19 M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 2.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1872, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 3.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1872, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 4.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1872, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

20 $100.] Interest warrant. [No. 5.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1872, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 6.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1872, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 7.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day Dec., A. D. 1872, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 8.

Town of Bruce.

21 The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1872, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 9.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1872, one hundred dollars, at The Fourth National Bank, New York, being interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 10.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st

day of Dec., A. D. 1872, one hundred dollars, at The Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 1.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1871, one hundred dollars, at The Fourth
22 National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 2.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1871, one hundred dollars, at The Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 3.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1871, one hundred dollars, at The Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 4.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1871, one hundred dollars, at The Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

23 $100.] Interest warrant. [No. 5.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1871, one hundred dollars, at The Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONNAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 6.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1871, one hundred dollars, at The Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONNAGHU,
Town Clerk.

THOS. CROSWELL,
Supervisor.

$100.] Interest warrant. [No. 7.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1871, one hundred dollars, at The Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 8.

Town of Bruce.

24 The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1871, one hundred dollars, at The Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL.
Supervisor.

$100.] Interest warrant. [No. 9.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1871, one hundred dollars, at The Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 10.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1871, one hundred dollars, at The Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHHU.
Town Clerk.

THOS. CROSWILL,
Supervisor.

$100.] Interest warrant. [No. 7.

Town of Bruce.

Town of Bruce, State Illinois, will pay to the bearer, on the 1st day of Dec., A. D. 1875, one hundred dollars, at The Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.
(Across the face:) 5.

$100.00.] Interest warrant. [No. 8.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer on the 1st day of Dec., A. D. 1875, one hundred dollars, at the Fourth National Bank New York, being one year's interest on the bond numbered above.

M. C. DONAGHU,
Town Clerk.

THOS. CROSWILL.
Supervisor.

(Across the face:) 5.

$100.00.] Interest warrant. [No. 9.

Town of Bruce.

The town of Bruce, State of Illinois, will to the bearer on the 1st day of Dec., A. D. 1875, one hundred dollars, at the Fourth National Bank New York, being one year's interest on the bond numbered above.

M. C. DONAGHU.
Town Clerk.

THOS. CROSWILL.
Supervisor.

(Across the face:) 5.

$100.00.] Interest warrant. [No. 10.

Town of Bruce.

The town of Bruce, State of Illinois, will pay to the bearer on the 1st day of Dec., A. D. 1875, one hundred dollars, at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. DONAGHU,
Town Clerk.

THOS. CROSWILL,
Supervisor.

(Across the face:) 5.

26 *Town of Bruce to American Life Insurance Co.*

To goods, wares, and merchandise	$6,000 00
" money lent	$6,000 00
" money paid	$6,000 00
" money had and received	$6,000 00
" account stated	$6,000 00
" amount of 20 coupons above copied	$6,000 00
" interest on said coupons	$2,000 00

THO. P. BONFIELD,
Pl'ff's Att'y.

(Endorsed:) Filed April 26, 1877. Wm. H. Bradley, cl'k.

Filed July 27, 1878, as amended.

WM. H. BRADLEY, *Clk.*

Afterwards, to wit, on the ninth day of May, A. D. 1877, in the adjourned May term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE AMERICAN LIFE INSURANCE COMPANY
vs.
THE TOWN OF BRUCE. } Assumpsit.

On motion of the defendant, by its attorney, the time to plead herein is extended twenty days.

27 Afterwards, to wit, on the 29th day of May, A. D. 1877, in the said adjourned May term of said court, in the record of the proceedings thereof in said entitled cause before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE AMERICAN LIFE INSURANCE COMPANY
vs.
THE TOWN OF BRUCE. } Assumpsit.

On motion of the defendant, by its attorney, the time to plead herein is extended ten days.

Afterwards, to wit, on the 23d day of July, A. D. 1878, in the July term of said court, in the record of the proceedings thereof in said enti-

tled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE AMERICAN LIFE INSURANCE COMPANY
vs.
THE TOWN OF BRUCE. } Assumpsit.

On motion of the plaintiff, by its attorney, leave is given it to amend its declaration, and increase the ad damnum in the summons herein.

Afterwards, to wit, on the 27th day of July, A. D. 1878, said defendant, by its attorneys, filed in said clerk's office its plea in said
28 entitled cause, which said plea is in the words and figures following, to wit:

Plea.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States, to the July term, A. D. 1878.

THE TOWN OF BRUCE
ads.
THE AMERICAN LIFE INSURANCE COMPANY.

And now comes the said defendant by Samuel Richolson and John J. Herrick, its attorneys, and defends the wrong and injury when, &c., and says actio non, because, it says, that the said several supposed causes of action in said amended declaration mentioned are one and the same, to wit, the supposed liability of the defendant to the plaintiff upon and by reason of certain interest coupons purporting to be the obligations of the defendant, which were held and owned by the plaintiff at the time of the commencement of said suit and not other and different.

That on, to wit, the first day of December, A. D. 1870, Thomas Cromwell, the supervisor of the said town of Bruce, and W. C. Donawho, the town clerk of said town of Bruce, signed and sealed and delivered to the Plymouth, Kankakee and Pacific Railroad Company, certain bonds purporting to be the bonds of said town of Bruce amounting in all to the sum of $10,000 (ten thousand dollars), to each of
29 which bonds were attached interest coupons, of which the coupons aforesaid and the bonds to which they were attached formed a part; all of which certain bonds so signed, sealed and delivered by said supervisor and town clerk were made payable on their face, respectively, to "The Kankakee and Illinois River Railroad Company or bearer," and in each of which bonds respectively were, among other things, by way of recital, the following words, viz: "This bond is issued by virtue of the law of the State of Illinois, entitled 'An act to incorporate the Kankakee and Illinois River Railroad Company,' approved April 15th, 1869, and 'An act to fund and provide for paying railroad debts of counties, townships, cities and towns, in force April 16th, 1869'; and we, the supervisor and town clerk of the township of Bruce, do hereby certify that a special election was held in said township on the 7th day of September, A. D. 1869, at which special election a majority of the legal voters participating at the same voted 'for subscription' to the capital stock of the Kankakee and Illi-

nois River Railroad Company in the the sum of ($25,000) twenty-five thousand dollars, and to issue bonds of said township therefor, and that the said special election was by the proper authorities then and there duly declared carried 'for subscription,' and that all the other requirements of the law in relation to said special election were duly complied with."

30 And the defendant further avers that by said act of April 16th, A. D. 1869, under which the said election was held, and under which said bonds purport to have been issued, it was enacted and provided in relation to subscriptions to the capital stock of railroad companies, among other things, in the words following: "Any county, township, city, or town shall have the right, upon making any subscription or donation to any railroad company, to prescribe the conditions upon which such bonds and subscriptions or donations shall be made, and such bonds, subscriptions, or donations shall not be valid and binding until such conditions precedent shall have been complied with."

And the defendant further avers that on, to wit, the 25th day of May, A. D. 1869, at the district aforesaid, to wit, at Kankakee, in said district, the board of directors of the Kankakee and Illinois River Railroad Company, in pursuance of the 6th section of the charter of said railroad company (which authorizes said board to prescribe regulations for receiving subscriptions to their capital stock from any county), did adopt and spread upon their records and publish to the world a resolution declaring, among other things, that "the various township bonds which may be voted on the line of the Kankakee and Illinois River Railroad in aid of its construction shall only issue in exchange

31 for the stock of said company when a well-assured contract for the iron shall have been secured by the directors of said railroad company based upon the completion of the road-bed through said towns," and afterwards (said resolution having been published by said railroad company, and the said town of Bruce having notice thereof), on the 28th day of July, A. D. 1869, there was filed in the office of the town clerk of the said town of Bruce, under and in pursuance of the provisions of said act of April 16th, 1869, an application or petition in writing addressed to the town clerk of said town, and signed by ten citizens of said town who were then and there legal voters thereof, wherein and whereby the said town clerk was requested and petitioned to call an election of the legal voters of said town to decide whether said town should subscribe $25,000 (twenty-five thousand dollars) to the capital stock of the said Kankakee and Illinois River Railroad Company, and in payment of the same issue 25,000 (twenty-five thousand dollars) of town bonds, to bear interest at the rate of ten per centum per annum, and to be payable in equal installments of $2,500 (twenty-five hundred dollars) each; that in and by said petition it was expressly stated and set forth that said subscription should be made, and said bonds issued, subject to certain conditions therein and thereby expressed in the words and figures following, to wit:

32 "First. That said railroad shall be so constructed as to pass through said town of Bruce, making Streator a point in a northwesterly direction towards Bureau Junction.

"Second. That the said company shall locate and maintain a depot in said town of Bruce.

"Third. That the said bonds shall be delivered to said railroad company in sums of one thousand dollars for every mile of road graded, as

the work progresses, and one thousand dollars for every mile of ties laid, and the balance when the road-bed is ready for the iron.

"Fourth. That the subscriptions be made subject to and under the conditions that no further calls or assessments shall be made upon the town or upon said subscription to stock over the amount aforesaid; provided, nevertheless, that the subscription to said capital stock shall be void and of no effect unless an agreement by said railroad company for said iron and rolling stock with responsible parties shall be made on or before one year from the date of voting by said town of Bruce, and the said railroad company shall have formed satisfactory arrangements to connect said railroad with some eastern terminus."

And the defendant further avers that on the filing of the said petition said town clerk posted notices, as required by law, for an election to be held in said town on the 7th day of September, A. D. 1869, to de-
33 termine whether said town would subscribe for said amount of stock of said company upon the conditions stated in said petition, and issue bonds therefor, which notice stated fully the proposition to be voted for and the conditions thereof in the same language set forth in the petition mentioned in this plea; and afterwards, on said 7th day of September, A. D. 1869, said special election was held in said town at the place named in said notice; and at said election a majority of the votes of all the voters residing in said town at that time were cast for said subscription; and the said votes, being duly canvassed, said election was declared carried "for subscription," and said result was duly certified to the clerk of the county court of said county of La Salle.

And the defendant further avers that the said election so held on said seventh day of September, A. D. 1869, was the said special election mentioned and referred to in the recitals of said bonds, as hereinbefore set forth.

And the defendant further avers that afterwards, to wit, on the twenty-first day of October, A. D. 1870, the said Kankakee and Illinois River Railroad Company, under and in pursuance of the laws of the State of Illinois, became consolidated with the Plymouth, Kankakee and Pacific Railroad Company, a corporation duly organized under the laws of the State of Indiana under the corporate name of the Ply-
34 mouth, Kankakee and Pacific Railroad Company, and afterwards the said bonds and coupons were delivered to said Plymouth, Kankakee and Pacific Railroad Company as aforesaid.

And the defendant further avers that at the time of the issuing of said bonds and coupons in this plea mentioned by the said officers of the said town of Bruce more than one year had elapsed after the time of the holding of the said election on said seventh day of September, A. D. 1869, as aforesaid, and yet no agreement had been made on or before the seventh day of September, A. D. 1870, by said Kankakee and Illinois River Railroad Company or by the railroad company formed by said consolidation and called the Plymouth, Kankakee and Pacific Railroad Company with any party or parties whatever for the iron for said railroad or any part thereof, or for the rolling-stock for said road, and so the said bonds and coupons were and are void.

And the defendant further avers that said railroad (formerly the Kankakee and Illinois River Railroad) never was so constructed as to pass through said town of Bruce; that said railroad was not constructed at the time of the issue of said bonds, nor has the same been constructed at any time since; that said Kankakee and Illinois
35 River Railroad Company or said Plymouth, Kankakee and Pa-

cific Railroad Company did not at any time locate or maintain a depot in said town of Bruce, and that the ties for said railroad were never laid for any one mile of said railroad within said town, and that no contract or agreement was made by either of said railroad companies with any responsible party or parties for the iron and rolling-stock for said railroad on or before one year from the said date of voting as aforesaid by said town of Bruce.

And the defendant further avers that no part of the railroad for the line of railroad of the Kankakee and Illinois River Railroad Company was ever built or constructed, and that no part of the original line of the railroad of the original Plymouth, Kankakee and Pacific Railroad Company was ever built or constructed; without this, that the defendant promised and undertook in manner and form as the plaintiff has above hereof alleged against the defendant in and by its said amended declaration, and this the defendant is ready to verify, &c.

By SAMUEL RICHOLSON AND
JOHN J. HERRICK,
Its Attorneys.

(Endorsed:) Filed July 27, 1878. Wm. H. Bradley, cl'k.

36 On the same day, to wit, the 27th day of July, A. D. 1878, said plaintiff, by its attorney, filed in said clerk's office its replication to the plea of said defendant in said entitled cause, which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court. Of the July term, A. D. 1878.

THE AMERICAN LIFE INSURANCE COMPANY
vs.
THE TOWN OF BRUCE. } Assumpsit.

And now comes the said plaintiff and says to the said plea of the said defendant to plaintiff's amended declaration above pleaded precludi non, because it says that after the issuing and delivery of said bonds and coupons as aforesaid heretofore, to wit, on the 19th day of June, A. D. 1871, and long before the said bonds and coupons or any of them or any part thereof became due and payable at Philadelphia, to wit, at the county of Cook, in the northern district of the State of Illinois, one Alexander Whilden, being the lawful and bona-fide holder of said bonds and coupons, for value paid therefor, without notice of any illegality, invalidity, irregularity, or information in the making, issuing, or delivery thereof, then and there for and in consideration of a
37 large sum of money, to wit, the sum of nine thousand and five hundred dollars, in hand paid to him by the said plaintiff, sold and delivered said bonds and coupons to the said plaintiff, and the said plaintiff further says that the said plaintiff purchased said bonds and coupons in good faith, and that at the said time when the said plaintiff purchased said bonds and coupons as aforesaid, or at any time previous thereto, it, the said plaintiff, had no knowledge or notice of any illegality, irregularity, invalidity, or informality whatsoever, if any, in the

making, issuing, or delivery of said bonds and coupons or any of them, and avers that it, said plaintiff, is the bona fide holder of said bonds and coupons, and this the said plaintiff is ready to verify; wherefore it prays for its judgment and its damages aforesaid, &c.

THO. P. BONFIELD,
Plff's Att'y.

(Endorsed:) Filed July 27, 1878. Wm. H. Bradley, cl'k.

On the same day, to wit, the 27th day of July, A. D. 1878, said defendant by its attorneys filed in said clerk's office its demurrer to the replication of said plaintiff in said entitled cause, which said
38 demurrer is in the words and figures following, to wit:

Demurrer to replication.

UNITED STATES OF AMERICA.
Northern District of Illinois, ss:

Circuit court. Of the July term, A. D. 1878.

THE AMERICAN LIFE INSURANCE COMPANY
vs.
TOWN OF BRUCE. } Assumpsit.

And now comes the said defendant and says to the said replication of the said plaintiff above pleaded and the matters and things therein contained in manner and form as above pleaded are not sufficient in law for the said plaintiff to have and maintain its aforesaid action thereof against the said defendant, and that it, the said defendant, is not bound to answer the same, and this the said defendant is ready to verify. Wherefore, by reason of the insufficiency of the said replication in this behalf, the said defendant prays judgment if the said plaintiff ought to have or maintain its action aforesaid.

SAMUEL RICHOLSON AND
JOHN J. HERRICK.

(Endorsed:) Filed July 27, 1878. Wm. H. Bradley, cl'k.

39 And on the same day, to wit, the 27th day of July, A. D. 1878, in the said July term of said court in the record of the proceedings thereof in said entitled cause before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE AMERICAN LIFE INSURANCE COMPANY
vs.
THE TOWN OF BRUCE. } Assumpsit.

The demurrer of the defendant to the replication of the plaintiff to the plea of the defenant to the amended declaration herein having been heretofore submitted to the court by the counsel of the respective parties, and the court having considered and being now sufficiently advised thereon sustains said demurrer, and the plaintiff, by his attorney, failing to make further replication and electing to abide by the said replication herein, it is thereupon considered by the court that the defendant have judgment upon its said demurrer, and that it have and recover of the said plaintiff its costs and charges about its defence in

this behalf expended, amounting to the sum of twenty-seven dollars and fifty cents, and that it have execution therefor.

40 And afterwards, to wit, on the 16th day of August, A. D. 1878, said plaintiff, by its attorney, filed in said clerk's office its bond in said entitled cause, which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, The American Life Insurance Company, a corporation organized under the laws of the State of Pennsylvania, as principal, and Julius S. Taylor, of the county of Kankakee and State of Illinois, as surety, are held and firmly bound unto the town of Bruce in the county of La Salle and State of Illinois in the penal sum of five hundred dollars, for the payment of which well and truly to be made we jointly and severally bind ourselves, our successors, heirs, executors, and administrators, respectively, and every of them. Sealed with the corporate seal of the said American Life Insurance Company and the private seal of the said Julius S. Taylor, and dated this the day of August, A. D. 1878.

The condition of the above obligation is such that whereas lately at the July term of the circuit court of the United States of America in and for the northern district of Illinois, A. D. 1878, in a suit depending in said court wherein The American Life Insurance Company was plaintiff and the said town of Bruce was defendant, a judg-
41 ment was rendered for the said town of Bruce against said American Life Insarance Company for the costs of suit. And the said American Life Insurance Company having obtained a citation on a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit and a citation directed to the said town of Bruce citing and admonishing it to be and appear at the Supreme Court of the United States at Washington, on the second Monday of the month of October next.

Now, therefore, if the said American Life Insurance Company shall prosecute said citation and writ of error to effect, and answer and pay all damages and costs if it shall fail to make said plea good, then the above obligation shall be void, otherwise to be and remain in full force and effect.

Words "of the United States" on 6th line of this page interlined before signing.

THO. P. BONFIELD.
GEORGE W. HILL, [SEAL.]
President Am. Life Ins. Co.
JULIUS S. TAYLOR, [SEAL.]
As security of Am. Life Ins. Co.

(Endorsed:) Filed August 16, 1878. Wm. H. Bradley, clerk.

42 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein the American Life Insurance Company is the plaintiff, and the town of

Bruce is the defendant, as the same appears from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this 28th day of September, A. D. 1878, and of our Independence the one hundred and third year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

43 UNITED STATES OF AMERICA.
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between the American Life Insurance Company, plaintiff, and the town of Bruce, defendant, in an action of assumpit, a manifest error hath happened, to the great damage of the said The American Life Insurance Company, as by its complaint appears, and it *is* being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1878, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fifteenth day of August, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the 103rd year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Indorsed:) Supreme Court of the United States. American Life Insurance Co. vs. Town of Bruce. Writ of error.

44 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To the town of Bruce, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1878, pursuant to an writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein the American Life Insurance Company is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. H. W. Blodgett, judge of the circuit court of the United States in and for said northern district of Illinois, this sixth day of September, in the year of our Lord one thousand eight hundred and seventy-eight.

H. W. BLODGETT, *Judge.*

45 (Indorsed:) Supreme Court of the United States. The American Life Insurance Co. vs. The Town of Bruce. Citation to October term A. D. 18 .

UNITED STATES OF AMERICA,
Northern District of Illinois:

E. L. Waterman, being duly sworn, deposes and says that he delivered a copy of the within citation to Samuel Richolson, one of the attorneys of the town of Bruce, on the 9th day of September, A. D. 1878.

Sworn to and subscribed before me this the 10th day of September, A. D. 1878.

[SEAL.] FREDERICK A. ROOT,
Notary Public.

Fees for service, $7.60.

UNITED STATES OF AMERICA,
Northern District of Illinois:

The undersigned does hereby waive the service of the within citation, and does hereby enter our appearance in the Supreme Court of the United States in the within cause.

Dated this the 6th day of October, A. D. 1878.

46 Supreme Court of the United States, of the October term, in the year A. D. 1878.

THE AMERICAN LIFE INSURANCE COMPANY
vs.
THE TOWN OF BRUCE. } In error.

Afterwards, to wit on the second Monday of October, A. D. 1878, in this the same term, before the justices of the Supreme Court of the United States, at the Capitol at Washington, comes the American Life Insurance Company, by Thomas P. Bonfield, its attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that the demurrer of the said defendant to the replication of the said plaintiff to said defendant's plea should have been overruled, and that judgment upon said demurrer should have been in favor of the said plaintiff instead of for the said defendant; and that there is also error in this, to wit, that by the said record and proceedings it appears that the judgment aforesaid was given in favor of said defendant and against said plaintiff, whereas by the law of the land, the said judgment should have been given for the said American Life Insurance Company and against the said defendant, the town of Bruce. And the said American Life Insurance Company prays that the judg-
47 ment aforesaid may be reversed, annulled, and altogether held for naught, and that it may be restored to all things which it has lost by occasion of the said judgment.

THO. B. BONFIELD,
For Plaintiff in Error.

(Indorsed:) Sup. Court of U. S. American Life Insurance Company v. Town of Bruce. Assignment of error.

(Indorsement on cover:) No. 272. The American Life Insurance Company, plaintiff in error, vs. The Town of Bruce. N. Illinois C. C. U. S. Filed 15th October, 1878.

REC. 272—3

AMERICAN LIFE INSURANCE COMPANY

PLAINTIFF IN ERROR

vs.

TOWN OF BRUCE

DEFENDANT IN ERROR

Siddall Brothers, Printers

AMERICAN LIFE INSURANCE COMPANY

PLAINTIFF IN ERROR

vs.

TOWN OF BRUCE

DEFENDANT IN ERROR

Siddall Brothers, Printers

Argument

This is an action of assumpsit on sixty interest warrants attached to certain bonds issued by the Town of Bruce in the State of Illinois, to secure a loan of $25,000.- to the Kankakee and Illinois River Railroad Company, and subsequently delivered — December 1st, 1870 — to the Plymouth, Kankakee and Pacific Railroad Company. It is not contended that all the requirements of the law in relation to them were not fully complied with, but it is argued that because the conditions upon which the loan was made were never performed, the obligation itself is void, and nothing can be recovered upon the bonds.

The Kankakee and Illinois River Railroad Company was duly incorporated April 15th, 1869, and on the 21st day of October, 1870, consolidated with the Plymouth, Kankakee and Pacific Railroad Company, a corporation organized under the laws of the State of Indiana, and adopted its corporate name.

On the 25th day of May, 1869, the Board of Directors of the Kankakee and Illinois River Railroad Company

Company, in pursuance of Section 6 of their Charter, passed the following resolution: —

> The various Township bonds which may be voted on the line of the Kankakee and Illinois River Railroad in aid of its construction shall only issue in exchange of the stock of said Company when a well assured contract for the iron shall have been secured by the directors of said Railroad Company based upon the completion of the road-bed through said Towns.

On the 28th day of July, 1869, a petition was properly filed in the office of the Town Clerk, requesting an election to be called by the Clerk to decide whether the Town would subscribe twenty-five thousand dollars to the capital stock of the Kankakee and Illinois River Railroad Company, and in payment of the same issue twenty-five thousand dollars in Town bonds, to bear ten per cent interest, and to be payable by instalments of twenty-five hundred dollars each.

By the 7th Section of the Act of April 16th, 1869 entitled "An Act to Fund and provide for Paying, "Railroad Debts of Counties Townships Cities and "Towns," it is provided that: —

> Any County Township City or Town shall have the right upon making any subscription or donation to any railroad company to prescribe the conditions upon which such bonds subscriptions or donations shall be made.

A

A special election was held in said Township on the 7th day of September, 1869, at which special election a majority of the legal voters participating in the same voted for subscription to the capital stock of the Kankakee and Illinois River Railroad Company, in the sum of twenty-five thousand dollars, and to issue bonds of said Township therefor; subject however to the following conditions: —

First: — The road should be constructed through said Town, making Streator a point.

Second: — That said Company should locate and maintain a depot in the Town.

Third: — That the said bonds should be delivered in sums of one thousand dollars for every mile of road graded, as the road progresses, and one thousand dollars for every mile of ties laid, and the balance when the road-bed is ready for the iron.

Fourth: — That the subscription should be made subject to the condition that no further calls or assessments should be made over the amount subscribed, and that the subscription should be void and of no effect, unless an agreement by said Railroad Company for the iron and rolling stock, with responsible parties, shall be made on or

or before one year from the date of the election, and the Company shall have formed satisfactory arrangements to connect the railroad with an eastern terminus.

The Clerk gave notice of the election, as required by law, setting up fully the proposition voted upon, and the conditions thereof, in the language of the petition, and the special election was held on September 7th, 1869, in pursuance of said notice. At this election there was a majority of all the votes of the voters of the Town cast in favor of subscription, and the same was duly canvassed and duly declared to be carried for subscription, and the result duly certified to the Clerk of the County Court of LaSalle, Illinois; and this was the same election referred to in the recitals of the bonds.

On the 1st day of December, 1870, **more than one year** after the date of the election, and when no one of the conditions that were made precedent to granting the subscription had been complied with, the Supervisor and Town Clerk of Bruce sealed and delivered unto the Plymouth, Kankakee and Pacific Railroad Company bonds to the amount of ten thousand dollars, to each of which bonds were attached coupons of which the above-mentioned coupons were a part, for interest. The bonds were made

made payable to the Kankakee and Illinois River Railroad Company, and each of them contained the following recital: —

This bond is issued by virtue of the law of the State of Illinois entitled "An Act to incorporate the Kankakee and "Illinois River Railroad Company" approved April 15th, 1869 and "An Act to Fund and Provide for Paying Railroad "Debts of Counties Townships Cities and Towns" in force April 16th, 1869, and we the Supervisor and Town Clerk of the Township of Bruce do hereby certify that a special election was held in said Township on the 7th day of September A. D. 1869, at which special election a majority of the legal voters participating at the same voted for subscription to the capital stock of the Kankakee and Illinois River Railroad Company in the sum of twenty-five thousand dollars and to issue bonds of said Township therefor and that the said special election was by the proper authorities then and there duly declared carried for subscription and that all the other requirements of the law in relation to said special election were duly complied with.

On the 19th day of June, 1871, and before the bonds and coupons were due, Alexander Whilldin, at Philadelphia, a lawful and bona fide holder of the bonds and coupons, for full value paid for them, without notice of any illegality, invalidity, irregularity or informality in the making, issuing or delivery thereof, in consideration of $9500.- paid to him by the plaintiff, sold and delivered the bonds and coupons to the plaintiff. And the plaintiff purchased

the

the bonds and coupons in good faith, and at the time it purchased them, or at any time previous thereto, it had no knowledge or notice of any illegality, irregularity, invalidity or informality whatsoever, if any, in the making, issuing or delivery thereof, and it is a bona fida holder of them.

Three questions are raised by the Plea, the Replication to it, and the Demurrer. They are: —

First: — Can the 7th Section of the Funding Act of April, 1869, be fairly construed in a manner to defeat the rights of an innocent purchaser for full value, of an immature obligation?

Second: — Whether a corporation whose bonds are certified by the the proper officer to be issued in conformity with **all** the provisions of an Act of Assembly creating the indebtedness, is not estopped from setting up any matter of original defence against an innocent third party?

Third: — Whether the execution and delivery of such bonds by the Supervisor and Town Clerk, with full knowledge that none of the conditions on which the loan was made had been fulfilled, and that no contract had been made for either the

iron

iron or rolling-stock, is not an absolute waiver of such conditions, and does not create an absolute and unqualified liability in the nature of an entirely new contract between the same principals?

I

The Act of Incorporation of the Kankakee and Illinois River Railroad Company is as follows: —

AN ACT TO INCORPORATE THE KANKAKEE AND ILLINOIS RIVER RAILROAD COMPANY: —
[Approved April 15th, 1869. Sessions Laws of 1869 Vol 3 page 1.]

* * * * * * * *

Section sixteen of that Act reads: —

SECTION 16.- To further aid in the construction of said railroad Townships Corporate Towns and Cities on or along the line of said railroad may subscribe to the capital stock of said company in sums not exceeding one hundred thousand dollars respectively. But no such subscription shall be made until the same shall be submitted to the legal voters thereof; and the Clerk thereof if any and if no such clerk then the County Clerk upon the presentation of a petition signed by at least ten citizens who are legal voters of the territory of the proposed subscription shall cause to be posted notices in at least three of the public places in such territory thirty days before such election notifying the legal voters of

of such territory to meet at the usual place of holding elections therein or, if none or if otherwise deemed proper at some convenient place for the purpose of voting for or against such subscription and if it appear that a majority of all the voters have voted "for subscription" it shall be the duty of the Supervisors respectively of said Corporate Towns or Townships or such Clerks for and in behalf of the Townships and Cities that shall have voted for said subscription to subscribe to the capital stock of the said railroad company the amount so voted to be subscribed and to receive from said company the proper certificates therefor and he shall execute to said company in the name of said Towns Townships Cities bonds bearing interest not to exceed ten per cent per annum which bonds shall run not less than ten years and not to exceed twenty-five years and the interest upon the same shall be made payable annually; and the said bond shall be delivered to the president or secretary of said railroad company for the use of said company and the said bonds shall be a pledge upon the revenue of such territories respectively. Said elections shall be held and conducted according to the laws of such Cities or Corporate Towns and Township elections under the Township organization laws and the result shall be certified to the County Clerk and be by him recorded and shall be evidence of the facts therein contained. Nothing herein shall prevent said Corporate Towns Cities and Townships from levying said subscription with such interest thereon in five instalments of annual taxation and collect the same with their annual taxes. PROVIDED the same does not exceed five per cent upon the amount of the taxable property thereof.

The 7th Section of the Funding Act of April 16th, 1869, is in these words: —

SECTION

SECTION 7.- And it shall not be lawful to register any bonds under the provisions of this act or to receive any of the benefits or advantages to be derived from this act until after the railroad in aid of the construction of which the debt was incurred shall have been completed near to or in such county township city or town and cars shall have run thereon; and none of the benefits advantages or provisions of this act shall apply to any debt unless the subscription or donation creating such debt was first submitted to an election of the legal voters of said county township city or town under the provisions of the laws of this State and a majority of the legal voters living in said county township city or town were in favor of such aid subscription or donation; and any county township city or town shall have the right upon making any subscription or donation to any railroad company to prescribe the conditions upon which such bonds subscriptions or donations shall be made; and such bonds subscriptions or donations shall not be valid and binding until such conditions precedent shall have been complied with and the presiding judge of the county court or the supervisors of the townships or the executive officer of the city or town that shall have issued bonds to any railway or railways immediately upon the completion of the same near to or through such county township city or town as may have been agreed upon and the running of the cars thereon shall certify under oath that all preliminary conditions in this act required to be done to authorize the registration of such and to entitle them to the benefits of this act have been complied with and shall transmit the same to the State Auditor with a statement of the date amount number maturity and rate of interest of such bonds and to what company and under what law issued and thereupon

the

the said bonds shall be subject to registration by the State Auditor as hereinbefore provided.

They are in effect, and for all the purposes of this Argument, but one Act, and must be read together to discover the false construction which the learned Judge who, in *Kohn vs The Town of Eagle*,* a case precisely aimilar to this, over-ruled the demurrer forced upon the 7th Section of the Funding Act of April, 1869. It may be premised that the innocent purchaser of an immature obligation for full value is an object of extraordinary protection from any infirmities attaching to the contract, that might disable either of the original parties in a suit upon it. He holds against the sternest equities between the obligor and the obligee. He is unaffected even by their fraud or mistake, if he buys innocently and for full value. He can be put to no further inconvenience, nor be exposed to any greater hardship than to show that he has paid a full consideration, and took without notice or suspicion of any invalidity.

Honesty and good faith are the basis of the mercantile law. Those therefore who act with honesty and good faith, and those only, are worthy of protection. It is therefore of the utmost importance that a bona fide holder should be involved

volved in no difficulty on account of secret transactions between the original parties.

Holme vs Karsper, 5 *Binn.* 469,

TILGHMAN, Ch. J.

Though indeed in Pennsylvania the rule has been still further relaxed in favor of a holder for value without notice; for in *Phelan vs Moss** it was held that the plaintiff could recover though he received the note under circumstances calculated to excite the suspicions of a prudent man: to destroy his title it must be shown that he took the note mala fide. And the doctrine of that case has been followed in

Zimmerman vs Kote, 75 *Penna. St.* 188;
Brown vs Reed, 79 *id* 370.

Nor did the commercial law of Illinois, as settled by numerous decisions of its Supreme Court at the time these bonds were issued, come into conflict anywhere with this general and fundamental principal. It fully endorsed and applied it. In the case of *Ryan vs Lynch*,† and of *Clark vs Board of Supervisors of Hancock County*,‡ it was laid down as indisputable

indisputable that when the Legislature conferred power to create the debt and issue the bonds, and the officers authorized to issue such bonds did issue them, and in the bond recited the particular power under which such bonds issued, and if the issue depended upon a favorable popular election, and the recital showed, or left it clearly to be inferred, that such election was duly held, no defence could be set up to such bonds in the hands of an innocent holder for value paid before maturity.

Johnson vs Starke Co., 24 Ill. 75;
Board of Supervisors vs Weider. 64 Ill. 427.

*Ryan vs Lynch,** decided in 1873, was a Bill in Equity to restrain the collection of a tax levied to pay interest on certain Township bonds. The Court said: —

Where bonds of a municipal corporation are issued without any power or authority in law, as under what purported to be a law, but which was not passed in the constitutional mode, they are absolutely void, no matter in whose hands they may be; *but if the legal power or authority to issue them existed, but was defectively or irregularly executed, they are only voidable, and an innocent holder may collect them.*

Schuyler Co. vs The People, 25 Ill. 185;
Marsh vs Fulton Co., 10 Wallace 683.

Nor

supra

Nor was it denied in *Kohn vs The Town of Eagle** that the Act of April 15th, 1869, under the provisions of which the Kankakee and Illinois River Railroad Company was organized, together with the proceedings of a popular election, gave the officers of the Town the power to make and deliver the bonds and coupons. But it is contended that in consequence of so much of the 7th Section of the Funding Act of April 16th, 1869, which reads: —

> Such bonds subscriptions or donations *shall not be valid and binding until such conditions precedent shall have been complied with,*

the rights of innocent holders were changed, and the time of payment of the interest on the bonds was postponed until all the conditions upon which it was voted to make the loan had been fully complied with and certified to have been so in the manner provided for in the Act of Assembly. This presents the first, and perhaps the vital, question in the case, which is not how far, but whether if at all, the rights of an innocent holder for value can be defeated or interfered with in any way by secret transactions and conditions between the original principals. It must be remembered that the law laid no obligation upon

* supra

upon the holders of these bonds to do more than to satisfy themselves that the County was by law authorized to issue them, and whether their issue had been authorized by a popular vote. They found them upon the market, payable to the Kankakee and Illinois River Railroad Company, **or bearer** — hence negotiable. They had no need to concern themselves even with the effect of the subsequent consolidation of that Company with the Plymouth, Kankakee and Pacific Railroad Company, October 21st, 1870, under the General Statute of the State, approved February 28th, 1854. They were not bound to do more than satisfy themselves that they were issued regularly and legally; and that was abundantly evident from the recital that each of the bonds contained. What more could they do? Whatever conditions there might be remaining uncomplied with were made secret by being kept off the face of the transaction, and a purchaser under no circumstances can be imagined (nor in any event is he required) to explore every conceivable defence that might avail between the obligor and obligee. He is absolutely unconcerned with them. They do not enter into the calculation.

But a more substantial reason than this, even, is found in the fact that these bonds to the amount of $10,000.- had actually been delivered to the Plymouth

How could it be imagined that a bond sealed and delivered — actually put into the market — remained subject to **any** conditions? Even between the original parties it might well be that the sealing and delivery of the bonds by the proper officers of the corporation, and their acceptance by the agents of the Railroad Company, was sufficient evidence of a new contract, independent of the old terms or conditions altogether. It was said by the learned Judge in *Kohn vs The Town of Eagle*:*

> We do not think it is to be regarded that the conditions named were prerequisite to the making of the subscription and issuing of the bonds and that they were to be complied with before the subscription should be made or the bonds issued: but only that the subscription and the bonds should be subject to the conditions. There would then be no want of power to make the subscription and issue the bonds. There is *nothing of illegality* in the bonds in question nor does the Statute declare them *void*.

Surely, where the power to issue the bonds is conceded, and the bonds themselves are admitted to be free from any illegality, all the requirements are fully met that it was declared in *Ryan vs Lynch*† entitled an innocent holder to collect them. Cer-

tainly

---

* supra

† supra

tainly, if it had been known that the loan was subscribed for conditionally, the fact that the bonds had been delivered would be sufficient evidence that the conditions had all been complied with, to prevent the defendant from taking advantage of his own wrong.

In the case of *Nugent vs The Supervisors of Putnam County** it was sought to repudiate a similar indebtedness, on the ground that the consolidation of the Kankakee and Illinois River Railroad Company with the Plymouth, Kankakee and Pacific Railroad Company rescinded the engagement of the County to subscribe a loan of $100,000.- Nugent had bought some of the bonds at their full price, and he sued the County, as in this case, upon the warrants for interest. Mr Justice STRONG, in delivering the opinion of the Court, said: —

> The plaintiff is a bona fide holder of some of these securities for value paid. It would we think be a reproach to the administration of justice if he cannot enforce the payment of those coupons and we see no principle of law or equity that stands in the way of his action. He found the bonds and the coupons upon the market. Proposing to buy he had only to inquire whether the county was by law authorized to issue them and whether their issue had been approved by a popular vote. *He was not bound to inquire further.*

The

* 16 Wallace 241

The case of *Kohn vs The Town of Eagle** was an ill-considered decision, and amounted to nothing less than an absolute denial of justice to the plaintiff. The bonds were issued, as here, before any one of the four conditions on which the loan was ordered to be made had been complied with. The plaintiff bought, before maturity, in good faith and for full value, and it was gravely announced that in consequence of a secret arrangement between the principals in the transaction, the bonds and coupons were absolutely null and void. It is relied upon here as being the decision of the highest authority in the State, and binding on the Federal Courts. But in the case of *Township of Pine Grove vs Talcott,†* where the same consideration was urged, Mr Justice SWAYNE, in giving judgment, said: —

> It is insisted that the validity of the Statute has been determined by two judgments of the Supreme Court of Michigan and that *we are bound to follow these adjudications*. We have examined those cases with care. With all respect for the eminent tribunal by which the judgments were pronounced we must be permitted to say that they are not satisfactory to our minds
>
> * * * * * * * *
>
> The question before us belongs to the domain of general jurisprudence

supra.

† 19 Wallace 677

jurisprudence. In this class of cases this Court is not bound by the judgment of the Courts of the States where the cases arise. It must hear and determine for itself.

Supervisor vs Shenck, 5 Wallace 772;
Olcut vs Supervisor, 26 Ibid 689;
Havemyear vs Iowa Co., 3 Ibid 294;
Town of Venice vs Murdock, 2 Otto 494.

It is a fundamental rule of this Court, that where a municipal corporation

has power under any circumstances to issue negotiable securities, the bona fide holder has a right to presume they were issued under the circumstances which give the requisite authority, and they are no more liable to be impeached for any infirmity, in the hands of such holder, than any other commercial paper.

Gelpcke vs Dubuque, 1 Wallace 203.

The construction which prevailed in the State Court upon the validity of bonds, entered into and formed a part of them, as the settled law of those contracts.

Elmwood vs Marcy, 2 Otto 291;
Gelpcke vs City of Dubuque, 1 Wallace 175.

The question then is, shall this Court follow the State Court in a change of views on this question? DILLON, J., in his *Municipal Corporations*,* in speaking of this Court, says: —

This

* vol. 1, § 6

This Court has refused to be concluded by the decisions of the State Court against the validity of such bonds made after the bonds were issued.

Havemyer vs Iowa Co., 3 Wallace 294;
Olcut vs Supervisors, 16 Ibid 689;

and refers to the above cases.

And we add

Pine Grove vs Talcott, 19 Wallace 677;
Supervisor vs Schenck, 5 Ibid 772;
Town of Venice vs Murdock, 2 Otto 494.

II

But apart from the consideration of what effect matters of original defence might have upon the rights of an innocent third party, it may be asked whether these defendants are not estopped by their own acts from setting them up? A party, and those in privity with him, cannot deny the truth of the representation he made to another, and on the faith of which that other acted. In a recent case, *Brooks vs Martin*,* it was decided that the maker of a promissory note, who told one proposing to buy it and desiring to know if he had any defence to it, that

that "it was all right," was estopped to dispute the truth of this admission, when sued on the note by the person to whom it was made. And the present case is a stronger one, if possible, for the representation that the Town bonds had been issued in entire conformity with the law providing for and regulating their issue was certified over the corporate seal of the corporation, by the office especially qualified by the Act itself for that duty.

It must be quite evident that when the Funding Act of April 16th, 1869, provided that: —

> Any County Township City or Town shall have the right upon making any subscription or donation to any railroad company to prescribe the conditions upon which such bonds subscriptions or donations should be made,

whatever conditions were made were intended to be taken and read as part of the very language of the Act itself. Courts have always so treated the conditions upon which the operation of a Statute is made contingent.

The Act must therefore be read as follows: —

> Any County Township City or Town shall have the right upon making any subscription or donation to any railroad company to prescribe the conditions upon which such bonds subscriptions

subscriptions or donations shall be made and such bonds subscriptions or donations shall not be valid and binding until: —

First: — The road shall be constructed through said Town making Streator a point.

Second: — Said Company shall locate and maintain a depot in the Town.

Third: — The said bonds shall be delivered in sums of one thousand dollars for every mile of road graded as the work progresses and one thousand dollars for every mile of ties laid and the balance when the road-bed is ready for the iron.

Fourth: — And the subscription shall be made subject to the condition that no further calls or assessments shall be made over the amount subscribed and that the subscription shall be void and of no effect unless an agreement by said railroad company for the iron and rolling stock with responsible parties shall be made on or before one year from the date of the election and the company shall have formed satisfactory arrangements to connect the railroad with an eastern terminus.

So that when the proper officers certified that **all** the requirements of the Act of April 16th, 1869, had been "duly complied with," he in fact certified — falsely, to be sure, but positively — that these conditions had been performed, and it cannot be but that having wrongfully taken the plaintiff's money by means of that representation, they are now estopped from

from denying the truth of the certification. In a well-considered case, *Patterson vs Lytle*,* it was decided that one is estopped from denying the truth when his assertion of a falehood has been the inducement to **action** by the other party, resulting in loss and injury to him. There was no part of the transaction, from beginning to end, with which the Supervisor and Town Clerk were not perfectly familiar. There was no part of it in regard to which the plaintiff ever had or could have got the least possible information. The Town and County officers when they executed and delivered these bonds and coupons to the Railroad Company, on December 1st, 1870, must have known — the law will presume that they knew — that there had not even been an attempt made to comply with any one of the conditions — as there never has been to this day. And the false statement that they made to put them into the market, since it could have no other object or effect than to deceive and defraud innocent buyres for full value, must be taken now as in every respect **true as against the perpetrators of the fraud**, and an absolute estoppel of their right to defend upon the bonds.

And it is to be further observed that even if they could be imagined as having intended to act in good faith

* 11 Pennsylvania State Reports 53

faith — or even if it is possible to suppose they were mistaken in what they did — they certainly had it in their power at any time to enforce by the process of their courts the rights of the corporation as against the default of the Railroad Company, and compel a transfer of the stock subscribed for to their account. Nothing of the kind was ever done. No action whatever was taken against the Railroad Company. Certainly if the corporation agreed to deliver, and actually did deliver, the bonds without regard to the conditions upon which they now contend they are invalid, they were entitled to receive their equivalent in the stock of the Railroad Company, and could have recovered it by suit; and on the other hand, in an action by the Railroad Company to recover the balance of the value of the shares subscribed for by the corporation, it would be estopped from setting up their infirmities, by the fact that they had already delivered a part of them. The corporation held itself out as a subscriber to the stock; and nothing is better settled, as was said in *Graff vs Pittsburgh & Steubenville Railroad Company*,* than that, where one admits himself to be a subscriber, and when on the faith of such admission, others have acted for his benefit, he will be estopped from subsequently denying that he did in fact subscribe

* Pennsylvania State Reports 489

scribe. And a subscriber sued for the amount of his subscription cannot set up as a defence, that his subscription was a feigned and fraudulent one, and that the company was a party to the fraud; nor would the law hesitate to enforce a subscription which was fraudulent as between the parties themselves for the benefit of the others in interest. *Miner vs Bank of Alexandria.**

Story's Equity Jurisprudence, sec. 1538;
Pulsford vs Richards, 17 Beavan, 87;
Bridger's Case, Law Rep. 9 Eq. 74;
Parsons on Contracts (1873)
*Vol. 2 notes to *pages 792 - 801.*

The case of *New Brunswick & Canada Railroad and Land Company vs Muggeridge*† is a very strong authority directly in point. That was a Bill to enforce specific performance of a contract to take certain shares of stock subscribed for on the faith of a false prospectus, and it was held that even if the representations made by the Company were believed to be correct at the time the prospectus issued, yet, inasmuch as the party agreeing to take the shares was not bound to make further inquiry, they could not

* 1 Peters 68
† 1 Dirst. N. S. 120

not enforce the agreement after the representations had been discovered to be false.

The Company was bound to know they were true before making them; and having made them, is now bound to make them good to those who have acted upon the faith of them, or else relinquish all advantage gained from them.

It only remains, then, to consider, in a somewhat different form, the question that has been substantially argued already, and that is: —

Whether the execution and delivery of such bonds by the Supervisor and Town Clerk, with full knowledge that none of the conditions on which the loan was made had been fulfilled, and that no contract had been made for either the iron or the rolling-stock, is not an absolute waiver of such conditions, and does not create an absolute and unqualified liability in the nature of an entirely new contract between the same principals?

The right of either party to alter the terms of a contract, with the consent of the other, is in any case as absolute as the right to contract at all. There is no limit to it. And like every other right, its exercise may be inferred from the acts of the parties themselves. Certainly, so far as a change or waiver of its express conditions may affect third presons, the

the presumption arising from the acts of the parties is a fair and legal one. An innocent holder of a bond for the payment of money is only bound to acquaint himself with its express condition, and although that may be changed any number of times, or altogether rescinded by the obligor and obligee, his right to recover upon the terms of the original undertaking is never lost or put in jeopardy. An original contract may be so altered as to become practically a new one between the parties themselves, but the condition upon which the purchaser for value relies never can be changed so as to affect him in any way whatever. If the law were not so settled by countless decisions that rest upon principles of common honesty and fair dealing, what is attempted to be done in this case would be a matter of every day occurrence. The maker and payee of commercial paper would only have to act in concert to postpone an innocent buyer who paid full value upon the faith of the representation that there was no defence to the contract. The obligor and obligee of a bond would only need to construe its conditions most favorably for themselves to enable them to defeat an assignee's right to sue upon it. Or if this Court will apply the doctrine of *Kohne vs The Town of Eagle** to the present case, it will hereafter be

possible

possible — it will be both right and proper — for the authorized agents of a municipal loan to certify over the corporate seal that its bonds are issued in full compliance with **all** the requirements of the Act of Assembly, and in the event of a recovery being sought upon them, to plead their own unmitigated falsehood in defence.

That this Court has steadily and sternly refused to sanction such a course is evident from the fact that it has, in all its late decisions, where the question of **good faith** on the part of the defendants was to be considered, put such a construction upon the Statute — independently of any local interpretation — as it deemed most serviceable to sustain real and substantial equities. It has never departed from the settled current of authority in favor of the protection of an innocent holder.

In one of the latest cases, *Anthony vs County of Jasper*, the Court said: —

> Dealers in municipal bonds are chargeable with notice of all the laws of the State granting power to make the bonds they find in the market;

but it added: —

"This we have always held: — **If the power** exists "in

101 U. S. 697

"in the municipality, the bona fide holder is protected "against mere irregularities in the manner of its "execution,"

and to correct the dangerous tendency of the doctrine skilfully and earnestly urged in all these cases, that a bona fide holder may be legally put upon a difficult and impractical inquiry, it added: —

"As against a bona fide holder, the public is bound "by what its authorized agents have done and stated "in the prescribed form."

So in the case of *Thomas vs West Jersey Railroad Co.** it was said: —

> In regard to corporations, the rule has been well laid down in
>
> *Parish vs. Wheeler, 22 N. Y. 494,*
>
> that the executed dealings of corporations must be allowed to stand for and against both parties when the plainest rules of good faith require it.

The case of *Township of Elmwood vs Marcy*† was one in which this Court was asked to adopt the present, as opposed to the recent construction of a State law by its Supreme Court; and the Court there said: —

We

* 101 U. S. 71.

† 2 Otto 289.

We are not called upon to vindicate the decisions of the Supreme Court of the State of Illinois, in these cases, or approve the reasoning upon which it reached its conclusions. If the questions before us had never been passed upon by it, some of my brethren, who agree to this opinion, might have taken a different view of them. But are not these decisions binding upon us in the present controversy? They adjudge that the bonds are void because the laws which authorized their issue were in violation of a peculiar provision of the constitution of the State of Illinois. We have always followed the highest Court of the State in its construction of its own constitution and laws. It is only where they have been construed differently at different times, that, in cases like this, we have adopted as a rule of action the first decision, and rejected the last. This has been done on the ground that rights acquired on the strength of the former decision ought not to be lost by a change of opinion in the Court; but where the construction has been fixed by an unbroken series of decisions, the Courts of the United States accept and apply it in cases before them.

If the contrary doctrine should find favor with the Court, its decision would affirm, that one party to a negotiation could delay his assent to the terms of the contract until the changes of fortune enable him to reap all the benefits, and throw all the losses on the other side, and then for the first time do what was necessary on his part to make the contract obligatory.

This Court has felt the necessity of settling the general law upon the subject, and it declared in its latest

latest announcement — *Douglass vs The County of Pike** — that a subsequent judgment of any court, which amounted to a reversal of its previous decisions, could have no power to disturb contracts made in good faith thitherto. No more than could an Act of Assembly operate retroactively upon them.
That was a case in which the Court were asked to reverse an important decision. The Chief Justice, in delivering the opinion, said: —

> As a rule, we treat the construction which the highest Court of a State has given to a Statute of the State, as a part of the Statute, and govern ourselves accordingly; but where different constructions have been given to the same Statute at different times, we have never felt ourselves bound to follow the latest decisions, if thereby contract rights which have accrued under the earlier decisions will be injuriously affected.

And also

Utley vs Donaldson, 94 U. S. 29;
Angell and Ames: Corp: sec 804 and note
(approved and adopted in
Whitney vs Wyman, 11 Otto 396).

The Court is only asked to dispose of the present case in the same way that it has uniformly treated every attempt at repudiation.

If

* 11 U. S. 667

If this Court should arrive at the conclusion that the rights of the plaintiff should prevail in this suit, we ask that it will reverse the judgment of the Court below, and over-rule the defendant's demurrer to the replication of the plaintiff, and remand for further proceedings.

HENRY HAZLEHURST

ISAAC HAZLEHURST

for plaintiff in error

OFFICE SUPREME COURT U. S.
FILED
JAN 20 1881
JAMES H. McKENNEY, Clerk.

The American Life Insurance Co.

PLAINTIFF IN ERROR,

vs.

The Town of Bruce.

G. L. Tort

THOMAS P. BONFIELD,
Counsel for Plaintiff in Error.

In the Supreme Court of the United States,

October Term, A. D., 1880, No. 272.

THE AMERICAN LIFE INSURANCE COMPANY,
Plaintiff in Error,

vs.

THE TOWN OF BRUCE.

In Error to the Circuit Court of the United States, for the Northern District of Illinois.

BRIEF, POINTS, AND ARGUMENT OF PLAINTIFF IN ERROR.

THOMAS P. BONFIELD,
Counsel for Plaintiff in Error.

In the Supreme Court of the United States,

OCTOBER TERM, A. D. 1880.

The American Life Insurance Company,

vs.

The town of Bruce.

ERROR TO THE CIRCUIT COURT OF THE NORTHERN DISTRICT OF ILLINOIS.

STATEMENT.

The question in this arises upon the pleadings. The declaration is in the Common Courts, and the bill of particulars of the plaintiff's cause of action contains copies of sixty coupons, of one hundred dollars each, for interest upon a series of bonds of the town of Bruce, issued and delivered to the Plymouth, Kankakee and Pacific Railroad Company.

The defendant filed a special plea to the declaration, setting up that the several counts were but for one cause of action, and that was the recovery of said interest coupons.

That the supervisor and town clerk of Bruce, on the first day of December, A. D. 1870, signed, sealed, and delivered unto the Plymouth, Kankakee and Pacific Railroad Company bonds to the amount of ten thousand dollars, to each of said bonds were attached coupons, of which the above-mentioned coupons were a part, for interest. That said bonds were made payable to the Kankakee and Illinois River Railroad Company, and that each of said bonds contained the following recital, viz.: "This bond is issued by virtue of the law of the State of Illinois, entitled, 'An Act to incorporate the Kankakee and Illinois River Railroad Company,' approved April 15th, 1869, and, 'An Act to fund and provide for paying railroad debts of counties, townships, cities, and towns,' in force April 16th, 1869, and we, the supervisor and town clerk of the township of Bruce, do hereby certify, that a special election was held in said township on the seventh day of September, A. D. 1869, at which special election a majority of the legal voters participating at the same voted for subscription to the capital stock of the Kankakee and Illinois River Railroad Company, in the sum of twenty-five thousand dollars, and to issue bonds of said township therefor, and that the said special election was by the proper authorities, then and there duly declared carried for subscription, and that all the other requirements of the law in relation to said special election were duly complied with."

That the act of April 16th, 1869, providing for the funding and paying of railroad debts of counties, townships, cities, and towns, contained the following provision, viz.: "Any county, township, city, or town, shall have the right, upon making any subscription or donation to any railroad company, to prescribe the conditions upon which such bonds, subscriptions, or donations shall be made, and such bonds, subscriptions, or donations shall not be valid and binding until such conditions precedent shall have been complied with."

That on the twenty-fifth day of May, 1869, the board of

directors of the Kankakee and Illinois River Railroad Company, in pursuance of section 6 of their charter, passed the following resolution: "The various township bonds which may be voted on the line of the Kankakee and Illinois River Railroad in aid of its construction, shall only issue in exchange of the stock of said company when a well assured contract for the iron shall have been secured by the directors of said railroad company, based upon the completion of the road-bed through said towns," which resolution was published, brought to the notice of said town.

That on the twenty-eighth day of July, 1869, under said act of April 16th, 1869, a petition, addressed to the town clerk of said town was filed in his office, signed by ten citizens of said town, who were legal voters of the town, requesting an election to be called by the clerk to decide whether the town would subscribe twenty-five thousand dollars to the capital stock of the Kankakee and Illinois River Railroad Company, and in payment of the same issue twenty-five thousand dollars in town bonds, to bear ten per cent. interest, and to be payable in installments of twenty-five hundred dollars each, and expressly stating that said subscription was made and said bonds issued subject to the following conditions:—

First. The road should be constructed through said town making Streator a point.

Second. That said company should locate and maintain a depot in the town.

Third. That the said bonds should be delivered in sums of one thousand dollars for every mile of road graded, as the work progresses, and one thousand dollars for every mile of ties laid, and the balance when the road bed is ready for the iron.

Fourth. That the subscription should be made subject to the condition that no further calls or assessments should be

made over the amount subscribed, and that the subscription should be void and of no effect unless an agreement by said railroad company for the iron and rolling-stock, with responsible parties, shall be made on or before one year from the date of the election, and the company shall have formed satisfactory arrangements to connect the railroad with an eastern terminus.

That the clerk gave notice of the election as required by law, setting up fully the proposition voted upon and the conditions thereof in the language of the petition. And that the special election was held on September 7th, 1869, in pursuance of said notice, at this election there was a majority of all the votes of the voters of the town cast in favor of subscription, and the same was duly canvassed and duly declared to be carried for subscription, and the result duly certified to the clerk of county court of Lasalle, Illinois, and that this was the same election referred to in the recitals of the bonds.

That the Kankakee and Illinois River Railroad Company on the twenty-first day of October, A. D. 1870, became duly consolidated with the Plymouth, Kankakee and Pacific Railroad Company, a corporation organized under the laws of Indiana, adopting the corporate name of the latter.

That at the time of issuing said bonds and coupons by the officers of said town, one year had elapsed from the time when said election was held, and no contract had been made for either the iron or rolling-stock for said railroad.

That said railroad was never constructed through said town; that no depot was located or maintained in said town; that no ties were laid in said town; that no part of said road was ever built.

To this plea the plaintiff filed a replication, alleging that on the nineteenth day of June, 1871, and long before the bonds and coupons were due, Alexander Whilldin, at Philadelphia, being the lawful and *bona fide* holder of the bonds

and coupons, for value paid therefor, without notice of any illegality, invalidity, irregularity, or informality in the making, issuing, or delivery thereof, in consideration of nine thousand five hundred dollars paid to him by the plaintiff, sold and delivered the bonds and coupons to the plaintiff. And the plaintiff averred that it purchased the bonds and coupons in good faith, and that at the time it purchased them, or at any time previous thereto, it had no knowledge or notice of any illegality, irregularity, invalidity, or informality, whatsoever, if any, in the making, issuing, or delivery thereof, and that it is a *bona fide* holder thereof.

To this replication the defendant filed a demurrer, which the court below sustained and gave judgment thereon for the defendant and costs of suit.

ASSIGNMENT OF ERROR.

The plaintiff in error says: That the Circuit Court erred in sustaining the demurrer to the replication of the plaintiff to the plea of the defendant in error, and in giving judgment thereon against the plaintiff in error in bar of its cause of action.

POINTS.

That the bonds and coupons were issued with the following recital of facts in the body of the bonds, viz.: "This bond is issued by virtue of the law of the State of Illinois, entitled 'An act to incorporate the Kankakee and Illinois River Railroad Company,' approved April 15th, 1869, and 'An act to fund and provide for the paying railroad debts of counties, townships, cities and towns in force April 16th, 1869;' and we, the supervisor and town clerk of the township of Bruce, do hereby certify that a special election was held in said township on the seventh day of September, A. D. 1869, at which special election a majority of the legal

voters participating at the same voted 'for subscription' to the capital stock of the Kankakee and Illinois River Railroad Company, in the sum of ($25,000) twenty-five thousand dollars, and to issue bonds of said township therefor, and that the said special election was by the proper authorities then and there duly declared carried 'for subscription,' and that all the other requirements of the law in relation to said special election were duly complied with." (Record page 29.) That the bonds were sold and delivered to the plaintiff on the 19th day of June, 1871, for value paid therefor, without any notice of any infirmity in the making and issuing them, and that they hold them in good faith. (Record page 36); and that, under such circumstances, the plaintiff should recover in this action. Knox *vs.* Aspinwall, 21 How., 539; Moran *vs.* Miami Co., 2 Black, 722–724; Supervisor *vs.* Schenck, 5 Wallace, 772; Rogers *vs.* Burlington, 3 Wallace, 654; Gelpck *vs.* Dubuque, 1 Wallace, 175; St. Joseph *vs.* Rogers, 16 Wallace, 644; Town of Coloma *vs.* Evans, 92 U. S., 484; Brooklyn *vs.* Insurance Co., 99 U. S., 362; Town of Venice *vs.* Murdock, 92 U. S., 500; Dillon on Municipal Corporations, 1 vol., section 417; Ryan *vs.* Lynch, 68 Ill., 164; Clark *vs.* Board of Supervisors of Humich Co., 27 Ill., 308; Johnson *vs.* Stark Co., 24 Ill., 75; Schuyler Co. *vs.* People, 25 Ill., 185; Board of Supervisors *vs.* Weider, 64 Ill., 427.

That the funding act of April 16th, 1869, recited in the bonds (Record page 29) was a measure to aid municipalities in assisting railroads by donating a portion of State taxes to them, and improving the credit of such municipalities, and that the conditions in the funding act, that "any county, township, city or town shall have the right, upon making any subscription or donation to any railroad company, to prescribe the conditions upon which such bonds, subscriptions or donations shall be made, and any such bonds, subscriptions or donations shall not be valid and binding until such conditions precedent shall have been

complied with" (Record, page 30), were intended only to be a limitation upon the registration of such bonds, and prevent the municipality from participating in the benefits of the act until such time as the railroad should be completed and taxation enhanced from railroad property. That with the recitals in these bonds in the hands of a purchaser in good faith for value, without notice of any non-fulfillment of condition or other infirmity, before the maturity of such bonds or coupons, he has a right to recover.

That the contrary construction given to this act by the Supreme Court of Illinois in Kohn et al., *vs.* Eagle, in 84 Ill., 292, is erroneous, and is not sustained by a reference to the various provisions of the acts or its title or spirit.

That the construction given to this act by the Supreme Court of Illinois is contrary to the view of the Supreme Court of the United States in the case of Nugent *vs.* Putnam Co., 19 Wallace, 241, submitted upon similar facts to the facts in this case.

That this court is not bound to follow the decisions of the Supreme Court of Illinois in the case of Kohn et al *vs.* Eagle, made as appears after the bonds and coupons were issued and sold to the plaintiff. Pine Grove Township *vs.* Talcott, 19 Wallace, 677; Supervisor *vs.* Schenck, 5 Wallace, 772; Olcut *vs.* Supervisor, 16 Wallace, 689; Havemyer *vs.* Iowa Co., 3 Wallace, 294; Town of Venice *vs.* Murdock, 92 U. S., 500; Dillon on Municipal Corporations, 1 vol., section 416.

BRIEF OF PLAINTIFF.

Power to issue the bonds mentioned in this suit was given under an act of General Assembly of Illinois, entitled, "An Act to incorporate the Kankakee and Illinois River Railroad Company," approved April 15th, 1869. Sessions Laws of 1869, 3 vol., page 61. Section sixteen of that act reads,—

"SECTION 16. To further aid in the construction of said railroad, township, corporate towns, and cities on or along the

line of said railroad, may subscribe to the capital stock of said company in sums not exceeding one hundred thousand dollars, respectively. But no such subscription shall be made until the same shall be submitted to the legal voters thereof; and the clerk thereof, if any, and if no such clerk, then the county clerk, upon the presentation of a petition, signed by at least ten citizens who are legal voters of the territory of the proposed subscription, shall cause to be posted notices in at least three of the public places in such territory, thirty days before such election, notifying the legal voters of such territory to meet at the usual place of holding elections therein, or if none, or if otherwise deemed proper, at some convenient place, for the purpose of voting for or against such subscription, and if it appear that a majority of all voters have voted 'for subscription,' it shall be the duty of the supervisors, respectively, of said corporate towns or townships, or such clerks, for and in behalf of the townships and cities that shall have voted for said subscription, to subscribe to the capital stock of the said railroad company the amount so voted to be subscribed, and to receive from said company the proper certificates therefor, and he shall execute to said company, in the name of said towns, townships, cities, bonds bearing interest, not to exceed ten per cent. per annum, which bonds shall run not less than ten years and not to exceed twenty-five years, and the interest upon the same shall be made payable annually; and the said bonds shall be delivered to the president or secretary of said railroad company for the use of said company, and the said bonds shall be a pledge upon the revenue of such territories, respectively. Said elections shall be held and conducted according to the laws of such cities or corporate towns, and township elections under the township organization laws, and the result shall be certified to the county clerk and be by him recorded, and shall be evidence of the facts therein contained. Nothing herein shall prevent said corporate towns, cities, and townships from levying said sub-

scription, with such interest thereon, in five installments of annual taxation, and collect the same with their annual taxes. *Provided*, the same does not exceed five per cent. upon the amount of the taxable property thereof."

The defendant having issued the bonds and coupons mentioned in this suit, under acts of the Legislature of Illinois, in payment of a subscription to a railroad company, which although made subject to a popular vote and other conditions, yet as the supervisor and clerk who executed these bonds and coupons for the defendant, under such acts, recited in said bonds the acts and the result of the elections, it is a determination of such facts and certificate that all the conditions required by law were complied with, and the plaintiff having purchased the bonds and coupons in good faith, for value, before the maturity thereof, without any notice that the conditions coupled with said subscription were not complied with, was not bound to make any inquiry and the defendant is estoped from making any defence.

Knox *vs.* Aspinwall, 21 Howard, 539; Supervisor *vs.* Schenck, 5 Wallace, 772; Rogers *vs.* Burlington, 3 Wallace, 654; Bissell *vs.* Jeffersonville, 24 Howard, 287; Woods *vs.* Lawrence Co., 1 Black, 386; Gelpck *vs.* Dubuque, 1 Wallace, 175; St. Joseph *vs.* Rogers, 16 Wallace, 644; Comrs. *vs.* Boles, 94 U. S., 109; Cromwell *vs.* Sac, U. S., 59; Town of Coloma *vs.* Evans, 92 U. S., 484; Moran *vs.* Marine Co., 2 Black, 772.

The case of Kohn *et al. vs.* Eagle, in 84 Ill., 292, being made after the issue of the bonds and coupons is not a rule of decision in this case under the views expressed in the following cases.

Township of Pine Grove *vs.* Talcott, 19 Wallace, 677; Supervisors *vs.* Schenck, 5 Wallace, 772; Gelpck *vs.* Dubuque, 1 Wallace, 175; Olcutt *vs.* Supervisors, 16 Wallace, 689; Town of Venice *vs.* Murdock, 92 U. S., 500; Dillon on Municipal Corporations, 1 vol., section 416 and note.

The construction given in the case of Kohn *et al. vs.* Eagle, to the act of April, 16th, 1869, was contrary to the views of this court in the case of Nugent *vs.* Putnam Co., 19 Wallace, 241.

That in construction of statutes where there is ambiguity or obscurity, reference should be had to the title of the act to explain it.

Blackstone Com., 1 vol., sec. 60; Jackson *vs.* Gilchrist, 15 Johns, 89; Holbrook *vs.* Holbrook, 1 Pick., 248. Conn. Ins. Co. *vs.* Albert, 39 Mo., 181.

The construction which prevails in State courts at the time municipal bonds are issued, upon questions vouching their validity, enters into and forms a part of them, as the settled law of the contracts.

Elmwood *vs.* Marcy, 9 U. S., 291; Gilpehe *vs.* City of Dubuque, 1 Wall, 175.

The adjudications of the Supreme Court of Illinois, at the time these bonds were issued upon these questions, was that when there was legislative power to create the debt, and issue the bonds, and the officers authorized to issue such bonds did issue them, and in the bond recited the particular power under which such bonds issued, and if the issue depended upon a favorable popular election, and the recital showed or leave it to be inferred that such election was duly held, no defense could be set up to such bonds in the hands of an innocent holder for value paid before maturity.

Ryan *vs.* Lynch, 68 Ill., 164; Clark *vs.* Board of Supervisors of Henry Co., 27 Ill., 308; Johnson *vs.* Stark Co., 24 Ill., 75; Board of Supervisors *vs.* Weider, 64 Ill., 427.

The bonds in suit are commercial paper, and belong to the domain of commercial law, and the United States Supreme Court is not bound by State court decisions.

Township of Pine Grove *vs.* Talcott, 19 Wall, 677; Supervisors *vs.* Schenck, 5 Wallace, 772; Olcutt *vs.* Supervisor, 16 Wallace, 689; Venice *vs.* Murdock, 92 U. S., 500.

ARGUMENT.

As we understand, the important question, and the only question to be submitted to the court in this case is, that of the construction and effect to be given to the funding act of April 16th, 1869, mentioned in recitals of the bonds. The defendant insists that there is a provision in this act which, under the facts set up in the plea, renders these bonds void in the hands of the plaintiff, notwithstanding the plaintiff is a *bona fide* holder for value, without notice of any infirmity in their making and issuing. The court below took this view of the law, and based its conclusion upon the case of Kohn *et al. vs.* The Town of Eagle, 84 Ill., 292. It appears that in that case suit was brought upon coupons attached to bonds given by the town of Eagle to the Plymouth, Kankakee and Pacific Railroad Company upon a subscription to the Kankakee and Illinois River Railroad Company, under the same statutes referred to in the bonds mentioned in this suit, and containing the same recitals made in pursuance of a popular vote upon similar conditions. It is, therefore, necessary to consider the opinion of the Supreme Court of Illinois, as the defendant insists that it must control this court in this case. In this opinion the Supreme Court holds that, under the funding act of April 16th, 1869, bonds issued by municipalities in payment of subscriptions in the aid of railroads voted to be delivered upon the performance of conditions precedent by the railroad company, not complied with, were properly issued, and were not void under the statutes, but are invalid and not binding until the conditions are complied with, in the hands of innocent holders for value paid, without notice; that under such circumstances it was proper for the officers,

whose duty under the law it was to issue these bonds without waiting for the performance of any of the conditions by the railway, and the payment of them should remain in abeyance, and be suspended until these conditions were complied with, notwithstanding the bonds had passed into the hands of innocent holders for value paid, without notice of these infirmities; and that the holder of the bonds or coupons could not recover, although by the record in that case they appeared to be *bona fide* and innocent holders, for value paid, without notice.

That court admits that, irrespective of the act of April 16th, 1869, the holders of the bonds and coupons, under the facts appearing in the record in that case, were entitled to recover, on account of the fact that they were innocent holders of the bonds and coupons, without notice of any infirmities. That the act of April 15th, 1869, together with the election proceedings, gave the officers of the town the power to make and deliver the bonds and coupons, but, owing to section 7 of the funding act of April 16th, 1869, the payment was suspended until the conditions were complied with, and changed the rights of innocent holders for value.

We claim that the intention of the act was not to effect the negotiability of bonds issued by the proper officers, acting under the power given them by statute, and of a favorable popular election, but to provide more efficient measures for the payment of the principal and interest of such municipal debts, made in aid of railroads in that State, by means of State taxation, and a judicious system of registration of such debts. The title of the act invites us to this view:—It is "An act to fund and provide for the payment of railroad debts of counties, townships, cities, and towns of Illinois." The first six sections of the act, and all sections subsequent to the seventh, provide for the payment of a portion of all State taxes that shall arise on the increased valuation of the taxable property of the municipalty, over and above the

assessment of 1868 upon the principal and interest of such bonds, but before such bonds could participate in the benefits of such revenue required them to be registered in one of the departments of the State, and directs how such taxes should be raised, and the manner of the application of such taxes in making such payments. Neither the title of the act or any of its sections bear the most remote reference to any measure affecting the negotiability of the bonds; but the Supreme Court of Illinois believes the seventh section does contain a provision to that end. That we may have a better understanding of this section, we set it out in full:—

"SECTION 7. And it shall not be lawful to register any bonds under the provisions of this act, or to receive any of the benefits or advantages to be derived from this act, until after the railroad, in aid of the construction of which the debt was incurred, shall have been completed near to, or in such county, township, city, or town, and cars shall have run thereon; and none of the benefits, advantages, or provisions of this act shall apply to any debt, unless the subscription or donation creating such debt was first submitted to an election of the legal voters of said county, township, city, or town, under the provisions of the laws of this State, and a majority of the legal voters living in said county, township, city, or town were in favor of such aid, subscription, or donation; and any county, township, city, or town shall have the right, upon making any subscription or donation to any railroad company, to prescribe the conditions upon which such bonds, subscriptions, or donations shall be made; and such bonds, subscriptions, or donations shall not be valid and binding until such conditions precedent shall have been complied with, and the presiding judge of the county court, or the supervisors of the townships, or the executive officer of the city or town that shall have issued bonds to any railway or railways, immediately upon the completion of the same near to, into, or through such

county, township, city, or town, as may have been agreed upon, and the running of the cars thereon shall certify under oath that all the preliminary conditions in this act required to be done to authorize the registration of such bonds, and to entitle them to the benefits of this act have been complied with, and shall transmit the same to the State auditor, with a statement of the date, amount, number, maturity, and rate of interest of such bonds, and to what company and under what law issued, and thereupon the said bonds shall be subject to registration by the State auditor as hereinbefore provided."

It is contended that the language used in this section, that "such bonds, subscriptions, or donations shall not be valid and binding until such conditions precedent shall have been complied with," renders these bonds void, under the matters of defense set up in the plea, in whomsoever's hands they fall. Such seems to be the opinion of the Supreme Court of Illinois in that case. That court says:— "The words of the statute, by their natural force, apply to bonds made under all circumstances, in whomsoever's hands they may be." We think that this conclusion is mistaken. In coming to such a conclusion we must exclude from our consideration the manifest purpose of the entire section, in barring all municipalities from participating in the benefits held out to them under the act, until they should first contribute by enhanced taxation to that fund, and must also exclude from our consideration other language of the section, which we think gratifies and explains what the legislature intended, by using the language, "shall not be valid or binding." We should consider the language and spirit of the entire section in putting any construction upon it. We believe the language of the section quoted was, in pursuance of this legislative intention, to limit the right to register the bonds, and participate in the benefits of the act. We find that the section sets out by

saying "it shall not be lawful to register any bonds under the provisions of this act, or to receive any of the benefits or advantages to be derived from this act until," etc., and subsequently, "the presiding judge of the county court, or supervisor of a township * * * shall certify under oath that all preliminary conditions in this act required to be done TO AUTHORIZE THE *registration of such bonds, and to entitle them to the benefits of this act, have been complied with.*"

This, together with the language used in the commencement of the section, we apprehend, qualifies that portion of the section which the State court thinks renders such bonds invalid. We think that this view is clear by reading the two last portions of the section quoted in connection. "such bonds, subscriptions or donations shall not be valid or binding until such conditions precedent shall have been complied with * * * to *authorize the registration of such bonds,* and to entitle them to the benefits of this act."

This reading is in harmony with the purpose of the act, as appears from its titles and various provisions, and preserves to municipalities ample means by law to protect themselves from the abuse of the powers vested in their officers, and does no violence to the rights of innocent purchasers of commercial paper.

It may be said that the legislature, by the use of this language, "such bonds, subscriptions, or donations shall not be valid or binding until such conditions precedent have been complied with," did not alone intend to limit the registration of such bonds, because they subsequently more particularly specified how the registration should be effected, by requiring the officer who issued the bonds to make an oath that the preliminary conditions had been complied with. We can not see any inconsistency in the legislature doubly guarding so important a provision. We must remember that the act was a business-like measure, to

improve the material resources of the country, to aid a strong public spirit then existing in favor of internal improvement, to improve the credit of the municipalities, to enhance the commercial value of their improvement bonds by donating to such municipalities a part of the State revenue, but still with business forethought providing for the increase and enlargement of the State revenue by means of the enhancement of taxable property, arising from the completion of the railroad enterprises aided. The first care of the legislature with this view was to provide that such bonds should not participate in the benefits of State revenue until the railway was completed and the cars should run over it. The reason of this was, that not until then would there be such enhancement of taxable property as in the opinion of the legislature ought to entitle them to participate in the revenue. From the time the railways would be completed the revenue would increase, and by the completion of the railway the municipality would contribute by enhancement of taxation to the common fund. It is contended that, as the legislature had thus guarded the registration of such bonds to completed railways, the subsequent provision that the municipality might impose conditions was unnecessary, and would have been omitted unless the legislature had used it as an inducement for declaring that the bonds should not be negotiable without a compliance with such conditions. We think that this does not follow. This revenue and common fund could be still more increased and benefitted by other measures besides the completion of the road, such as diverging the line of these railroads to build up and benefit particular towns, cities, and localities, the construction of machine shops at particular localities, and in other ways not embraced in the above provision. For instance: Streator is the center of important coal mining interests, and enterprises seeking outlets for the products of her mines and industries in every direction. The location of such railway to Streator, and the location

and maintenance of a depot there would be a more considerable enhancement of the revenue which the State would receive by the construction of such a railway than to build it miles away from there. Railway bridges are often used in common with the public as highway bridges, and such use tends to the improvement of the country and results in the enhancement of taxation. Other measures of benefit are included in those subjects, which are made a matter of conditions in subscriptions to railways.

The legislature, as a benefit to the State, provided that such municipalities might impose conditions embracing such objects, and that a compliance with such conditions, made by the municipalities, should be a condition precedent to the registration of such bonds, and a participation in the State revenue, and not as claimed, wi h an intention to change any rule of commercial law. It is again contended that if the legislature did not intend to make such bonds void in the hands of innocent purchasers, there was no object in declaring that they should be invalid, as such was the law of the State, and such provision was unnecessary. This provision was unnecessary, as between the municipalty and the railroad under such circumstances, but it was necessary, as a limitation on registration.

In the case of the People *vs.* Taywell Co., 22 Ill., 147, 1859, the State court held that municipalities had the right to impose conditions upon making a subscription. The same thing was held in the case of the People *vs.* Dutcher, 56 Ill., 148, and other cases since. Such being the law, why should the legislature make such statutory declaration, unless it was done to prevent the registration of such bonds, and keep the municipality from participating in the State revenue. If, to prevent the municipality from participating in the revenue, it was unnecessary to declare the bonds invalid for such purpose, on account of the subsequent provision to that end, it was still as unnecessary to declare the right of the municipality to impose conditions, a right which the

statute gave no force to. The mere declaration of the right of the municipality to impose conditions, might not prevent it from participating in the benefits of the act, and to doubly guard against such contingency, we believe, the legislature inserted the clause declaring the subscription invalid until the conditions were complied with as a condition precedent to the registration of the bonds.

The State Court holds that under the act in question the municipal officers could execute and deliver to the railway company such bonds without any compliance with the conditions.

The language used in the section "The presiding judge or the supervisor * * * that shall have issued bonds to any railway or railways immediately upon the completion near to * * * shall certify under oath that all the preliminary conditions in this act required to be done to authorize the registration of such bonds," &c., and "to what company and under what law issued," contemplates that such bonds may have been issued. Section two of the act contemplates that such bonds may at the time of the registration have been sold, as it provides that the state auditor shall register them in the name of "the holder thereof." We do not believe it possible, in view of these provisions, that the legislature intended that such bonds should be invalid against innocent purchasers. It was establishing such an instrument for fraud and dishonesty that it is impossible to believe it was contemplated by the legislature. It is not possible that the legislature would have permitted the proper officers to execute and deliver to a railroad company negotiable paper of this character if they intended that such paper should be worthless and void, without a more explicit declaration of that fact than appears from these provisions. The execution and delivery of such paper, under the construction given to the act by the State Court, carries with it such danger of fraud upon innocent purchasers that it is impossible to believe that the legislature

intended that such bonds should be invalid in the hands of innocent purchasers, or to allow their circulation in commercial markets with such a ban upon them.

In other states where acts having this effect have been adopted, the acts in express terms have forbid any delivery of such bonds to the railway until all regulations regarding the validity of the bonds should be complied with in order that fraud upon innocent purchasers by the possession of of such negotiable securities might be prevented; or have expressly declared that registration is necessary to their validity and negotiability. Such certainly would have been the provisions of this act if such had been the intention of the legislature.

II. This is not a new question for the consideration of this court. It has been presented to this court once before, and we believe fully considered. In the case of Nugent *vs.* Putnam Co. (19 Wallace, 241), a suit was brought upon interest coupons attached to bonds issued by the county of Putnam in Illinois, to the Plymouth, Kankakee and Pacific Railroad Company, in payment of the subscription of that county to the capital stock of the Kankakee and Illinois River Railroad Company. The bonds contained the following recitals, viz.: "This bond * * * is issued under and in pursuance of orders of the board of supervisors of Putnam county, Illinois, for subscription to the capital stock of the Kankakee and Illinois River Railroad Company, as authorized by the laws of the State of Illinois, authorizing cities and counties to subscribe to the capital stock to aid and construct railroads;" also in accordance with the provisions of an act of the State of Illinois, entitled, "An act to fund and provide for the paying the railroad debts of counties, townships, cities and towns, in force April 16th, 1869." In an examination of the record of that case it will be found that the county claimed that the resolution of the board of supervisors of Putnam county, in ordering

the question to be submitted to the voters of the county, as to whether the board should be authorized to make a subscription, specified and coupled with it conditions that the road should be located and constructed within half a mile of Hennepin, in said county, a condition that was never complied with. The pleas of the county were similar to the pleas in this case, so far as this question is concerned, we believe. The particular point made in this case was ably presented by a distinguished lawyer, and if the defendant in this suit is right in the view it has taken of the law, we can see no reason why Putnam county should not have prevailed in that suit. Yet this court refused to adopt this view of the law. It is true that in the decision of that case the court ignored the question raised in this case, but it was not ignored because it was not ably and fully presented.

III. The Supreme Court of Illinois, in the case of Kohn *et al. vs.* Eagle, say "we do not think it is to be regarded that the conditions named were pre-requisites to the making of the subscriptions and issuing of the bonds, and that they were to be complied with before the subscription should be made or the bonds issued; but only that the subscriptions and the bonds were to be subject to the conditions." "There would then be no want of power to make the subscription and issue the bonds." * * * "There is nothing of illegality in the bonds in question, nor does the statute declare them void." * * * "The bonds are not declared to be to their whole extent not valid and binding, but are declared to be to a certain extent not valid and binding, that is, until the conditions are complied with * * * even in the hands of innocent purchasers."

It will be seen that the court was of the opinion that, under the funding act of April 16th, 1869, it was proper for the officers of that municipality to issue bonds upon the subscription, but that until such conditions were complied

with the bonds were void, not only in the hands of the railroad company, but in the hands of innocent purchasers. This is an extraordinary construction of the law affecting commercial paper. When these acts were passed and these bonds were issued it was expected that they would be sold in the eastern states. It was well-known that there was no capital in Illinois to invest in such paper. The plea shows that portions of the bonds were to be issued before the conditions were complied with; that the people voted for the subscriptions with the direct understanding that the bonds should be issued to a great extent before the conditions were complied with; and it was well understood that the bonds were to be issued to enable the railroad company to sell them and employ the proceeds in fulfilling the conditions of the subscription. It is, therefore, when we regard the consequences and results of this and like subscriptions, a strange construction of this act to hold that it was proper to issue such bonds and send them to distant markets and sell them to innocent purchasers; but until every condition was complied with the bonds were void in whomsoevers hands they might fall. That the obligation of these bonds that the municipalities would pay the principal and interest was to be taken in a Pickwickian sense, that they would pay the principal and interest in case certain conditions should be complied with, which were not mentioned in the bond. Practically it was impossible in the commercial markets for purchasers to know whether any of the conditions were complied with. If they had made the proper inquiries they would have found that a large portion of these bonds were required to be issued under the election proceedings before the conditions could be complied with. The Supreme Court say there was power to issue the bonds. The defendant claims that the act, as the court construes its meaning, was intended to prevent the fraudulent issue of such bonds, an illogical deduction.

While that may be so it would seem, if this construction

is proper, that the effect is to defraud the dealers in such securities. We think, while we have great respect for the Supreme Court of Illinois, that the decision is wrong and can not be supported upon any principles of right or rules of legal construction.

In following up the construction given to this act by the State court, some strange logical deductions arise. That court holds that the legislature authorized these bonds *prima facie* negociable in their character to issue, and that they might pass into the hands of innocent purchasers. Why allow them to issue, unless to allow them to be sold? If the recitals would not protect innocent purchasers, what benefit would the issuing them be to the railway? Unless the railway could convert them into money they would receive no aid or benefit from the issuing of the bonds. Evidently the permission to issue the bonds to the railway company was to enable the railway company to sell them and convert them into money. With the paramount purpose in view by the act to aid and assist municipalities in making these improvements, how could the railway company sell invalid bonds? Who would buy them, and how, and in what way would the railway company be aided? How would the municipality be aiding the railway then? Yet, under the decision of the State court, the paramount object of the legislature would be defeated by this construction, and we must believe acts abortive in their effects were contemplated by the legislature, or that a system was purposely established to obtain money from innocent persons to aid in these enterprises, and if the municipality subsequently failed to obtain all the benefits sought by it, to leave the innocent purchaser remediless for the loss of his money, a rascally piece of legislation. These are the logical results of the construction given to this act by the State court. But, if the act is construed as we contend it should be, as an act to aid municipalities in making internal improvements by a judicious system of registration and taxation, and not to im-

pair the existing laws of contracts, the rights and interests of all parties are preserved.

IV. This opinion of the Supreme Court of Illinois was rendered at the September term, 1876. The bonds and coupons were issued and put into market 1871. The plaintiff purchased them on the 19th day of June, 1871.

At that time, the law, as we understood it, as held by this court was this, "Bonds payable to bearer, issued by a municipal corporation, to aid in the construction of a railroad, if issued in pursuance of a power conferred by the legislature, are valid commercial instruments; but if issued by such corporation, which possessed no power from the legislature to grant such aid, they are invalid, even in the hands of innocent purchasers. Such power is conferred frequently to be exercised in a special manner, *or subject to certain regulations, conditions or qualifications;* but if it appears that the bonds issued show by their recitals that the power was exercised in the manner required by the legislature, and that the bonds were issued in conformity with those regulations, and pursuant to those conditions and qualifications, prove that any or all the recitals are incorrect, will not constitute a defence to the corporation in a suit on the bonds or coupons, if it appears that it was the sole province of the municipal officers who executed the bonds to decide whether or not there had been an antecedent compliance with the regulations, conditions or qualification which it is alleged was not fulfilled." "That *mere irregularities in the exercise of the power* will not avail as a defence against an innocent holder for value, and that the only defense against such a holder is the want of power to issue the bonds." (Dillon on municipal corporations, 1 vol., sec. 416c; St. Joseph Township *vs.* Rogers, U. S., 16 Wallace, 644.)

That where the corporation or certain officers are invested with power to decide whether the condition precedent has been complied with, then their recital that it has been, made in

the bonds issued by them and held by a *bona fide* purchaser, is conclusive evidence of the fact and binding upon the municipality, for the recital is itself a decision of that fact by the appointed tribunal." (Bissell *vs.* Howard, 24, 287; Knox *vs.* Aspinwall, 21 Howard, 539; Dillon Municipal Corporation, section 417.)

The doctrine, as held by the Supreme Court of Illinois, on this question at that time was, that if the bonds were issued without the authority of law they were void, but if the legal power to issue them existed, but was defectively or irregularly executed, they were only voidable, and an innocent *bona fide* holder would be entitled to collect them." Ryan *vs.* Lynch, 68 Ill., 164; Clarke *vs.* Board of Supervisors of Hancock county, 27, 308; Johnson *vs.* Stark county, 24 Ill., 75; Schuyler county *vs.* People, 25 Ill., 185; Board of Supervisors *vs.* Weider, 64 Ill., 427. The law as held by the Supreme Court of Illinois and this court, at that time, was substantially alike.

The construction which prevailed in the State court upon the validity of bonds, entered into and formed a part of them, as the settled law of those contracts. (Gelpck *vs.* Dubuque, 1 Wallace, 175.) The question then is, shall this court follow the State court in a change of views on this question? Judge Dillon, in his Municipal Corporation (vol. 1, 416), in speaking of this court, says, "This court has refused to be concluded by the decisions of the State court against the validity of such bonds made after the bonds were issued," and refers to the above cases.

Havemeyer *vs.* Iowa Co., 3 Wallace, 294; Oleut *vs.* Supervisors, 16 Wallace, 689; and we add Pine Grove *vs.* Talcott, 19 Wallace, 677; Supervisor *vs.* Schenck, 5 Wallace, 772; Town of Venice *vs.* Murdock, 92 U. S., 501.

We are aware this court has made some exceptions to this rule in some cases of late years, but it has never been contended that this court was obliged to follow a State court in

its decisions, but on the contrary it has said that in doing so where the reasons did not approve themselves to the judgment of this court, it "would abdicate the performance of one of the most important duties with which this tribunal is charged with and disappoint the will and salutary policy of the framers of the constitution in providing for the creation of an independent federal judiciary." (Township of Pine Grove *vs.* Talcott.)

In the cases upon the question of municipal bonds, in which this court has followed the decisions of the State court, made after the issuing of such bonds and the rights acquired by innocent purchasers, it has been upon the question of legislative power to create such debt. This question involves the machinery of local government and local elections, more familiar to the State court than to this court, and in which this court may be willing to submit to the judgment of tht State court. But the question of legislative power to create this debt is conceded by the Supreme Court of Illinois. That court as we have already stated says, the officers had the power to issue the bonds and to deliver them to the railroad company. When these bonds went into circulation in market it ceased to be a question of mere local law and came into the range of commercial law, where the opinion of the Supreme Court of Illinois should have less weight. When these bonds went into the general markets, authorized by the State of Illinois, it is for this court to determine the question of the rights of innocent purchasers. This court is not bound to follow that court in an illogical deduction after it has admitted the question of power. Both courts previously agreed upon the law that "when there was legislative power to create the debt, and the officers designated to issue bonds did issue them, reciting the power in the bonds, that recital was a decision of that fact, and the municipality was forever estoped from making any defense against an innocent holder for value," we believe this court should maintain this rule, notwithstanding the

Supreme Court of Illinois has adopted a different rule on this question. In the case of Township of Pine Grove *vs.* Talcott, it was insisted that this court was bound to follow the decision of the Supreme Court of Michigan, made after the issue of certain municipal bonds to a railway, in which it declared that the legislative acts, authorizing the creation of such municipal indebtedness, were unconstitutional, and such bonds void. This court held that commercial securities were involved and the question belonged to general jurisprudence; it was not bound to follow the decision of the State court; and give away its own convictions as repeatedly expressed.

Again, in the case of Supervisor *vs.* Schenck, 5 Wallace, 77, this court held where it appeared that the Supreme Court of Illinois had decided the bonds in that suit to be void in the hands of innocent holders, held, that as the power to issue bonds was fully conferred by law, the question of their validity in the hands of an innocent holder, without notice, is a question of commercial law. Where the State adjudication, although entitled to great respect, did not furnish the rule for the decision of this court." Also, held in Oleut *vs.* Supervisors, 5 Wallace 772; Swift *vs.* Tyson, 16 P., 18.

IV. It is a fundamental rule of this court, that where a municipal corporation "has power under any circumstances to issue negotiable securities, the *bona fide* holder has a right to presume they were issued under the circumstances which give the requisite authority, and they are no more liable to be impeached for any infirmity in the hands of such holder than any other commercial paper."

Gelpek *vs.* Dubuque, 1 W., 203.

That the "recitals in the bonds that the requirements of the law had been met, amounts to *an estoppel in pais* upon the corporation, of which the officers issuing the bonds were the public agents, and the purchaser was not bound to look

further for evidence of a compliance with the conditions to the grant of the power."

Moran *vs.* Miami County, 2 Black, 772.

The bonds in question recite that they were issued by virtue of the law of the State of Illinois, entitled, "an act to incorporate the Kankaka and Illinois River Railroad Company," approved April 15th, 1869, and "an act to fund and provide for paying railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, and we, the supervisor and town clerk of the township of Bruce, do hereby certify that a special election was held in said township on the seventh day of September, A. D. 1869, at which special election a majority of the legal voters participating at the same voted "for subscription" to the capital stock of the Kankakee and Illinois River Railroad Company, in the sum of $25,000, and to issue bonds of said township therefor, and that the said special election was by the proper authorities then and there declared carried."

It was the duty of the supervisor and clerk to ascertain whether all the preliminary conditions to the issue of these bonds were complied with, and their decision was a determination of that fact.

Same cases above cited; Knox *vs.* Aspinwall, 21 Howard, 544; Mercer *vs.* Hacket, 1 Wall, 83; Woods *vs.* Lawrence Co., 1 Black, 386; Meyer *vs.* Muscatine, 1 Wall, 175; Supervisor *vs.* Schenck, 5 Wallace, 784; Town of Coloma *vs.* Evans, 92 Ill., 484; Nugent *vs.* Putnam Co.

We believe this rule is changed under the funding act of April 16th, 1869. The funding act does not establish any new rule or method for the determination of such facts. It does not designate any officer who shall ascertain and declare when conditions precedent have been complied. It leaves that question as it stood before that act was passed. It must be decided by the same officers, in the same way it

was decided before. The officers have decided it, and certified that fact in the bond, and it is an estoppel upon the municipality. This court has held that this fact must be ascertained before the bond issues. I think it is clear that such is the requirement of the act of April 16th, 1869, as well as the act of April 15th, 1869. The two acts must be considered *pari materia*, and under the last act it is imperative that the fact must be determined before the bonds issue, and think it equally as clear under the first. And the supervisor and clerk are the persons required to ascertain and determine that fact, and they having so stated in the bonds, the *bona fide* holders for value "need go back no farther." (Town of Coloma *vs.* Evans.) It may be claimed that the recital is not sufficient compliance with the conditions imposed upon this subscription. We think it was as full as in Gelpck *vs.* Dubuque; Knox *vs.* Aspinwall; Town of Coloma *vs.* Evans.

In keeping in view that the bonds are commercial paper, passing by delivery, and so regarded by the laws and decisions of Illinois, that the questions of the performance of conditions precedent must be settled before the issuing of such bonds, and that this necessity must enter into the question of the discussion of the act of April 16th, 1869, and if settled, it must be finally settled, not subject to be reopened.

V. The legal profession generally, we believe, were of the opinion that bonds issued under the funding act of April 16th, 1869, would be construed by the rules governing and applied to all other bonds, issued under legal authority, coupled with conditions and qualifications, and that the recitals in the bonds would protect a *bona fide* holder for value, without notice of any infirmity, and that the provision regarding conditions referred to in section 7 of the act in question, went only to the question of the registration of the bonds, but did not effect their validity in the hands of

such *bona fide* holder for value without notice. That the officers appointed by statute to ascertain and determine the fact as to whether the precedent conditions had been complied with, and certified to the fact by the recitals in the bond issued, had determined that question, and made it unnecessary for the purchaser to make any inquiry, and forever estopped the municipality from denying it. When these bonds were issued, they were taken under this view of the law to Eastern markets for sale. A vast amount of bonds in aid of the railways before mentioned, and of other railways in this State, under the funding act of April 16th, 1869, were put upon markets in the Eastern States. Lawyers, eminent in their profession, who examined these bonds, advised their clients to invest in them. They were sold under the faith of these decisions. They passed into the vaults of banks, the hands of the rich, and of widows, single women, guardians of children, and trust funds. Many people took them of slender means and income, who were tempted with the large interest, and assurances of a safe investment, and in some cases invested all they had in these bonds. Many of them have since suffered with want and penury by reason of the repudiation of this class of debts, by these municipalities. The people who purchased these bonds were led to believe that the recital of the funding act of April 16th, 1869, was a benefit and advantage to the investment, seeming to them only to be a generous and liberal donation of State revenue to make the bonds more valuable, the payments more prompt and certain. Such I believe was the universal opinion at that time of this act. This opinion was subsequently vindicated in the case of Nugent *vs.* Putnam county. Much has been said by these municipalities about being defrauded if this class of bonds shall be upheld. I have no sympathy for them when I think of the calamity brought upon innocent people by holding their dishonored obligations. The howl that these municipalities have raised against the payment of these

bonds, they raised to compel their officers to issue them. In the wild public excitement for the immediate prosecution of these enterprises, the officers of the municipalities were urged into acts alike calamitous to the municipality and the innocent holders of such bonds. The officers who yielded to a public pressure to issue such bonds would not have resisted a much slighter pressure to refuse to issue them. Any tax payer could have readily prevented any illegal issue by an injunction. But these municipalities, through their people, having actively or passively allowed these bonds to enter into commercial circulation, under every principle of justice should be estopped from making any defence against those who have in good faith invested their money, believing in this principle of law, that bonds issued under lawful authority, by the persons authorized to do so, reciting the power under which they acted, should be protected by the courts in the hands of innocent holders.

If this court should arrive at the conclusion that the rights of the plaintiff should prevail in this suit, we ask that you will reverse the judgment of the court below, and overule the defendants' demurrer to the replication of the plaintiff, and remand for further proceedings.

THOMAS P. BONFIELD,
Counsel for Plaintiff in Error.

In Supreme Court of the United States.

The American Life Insurance Company
vs
The Town of Bruce.
No. 272.

BRIEF FOR DEFENDANT IN ERROR.

P. PHILLIPS,
SAM'L RICHOLSON,
W. HALLETT PHILLIPS,
For Deft. in Error.

R. O. Polkinhorn, Pr., 622 and 624 D Street, Washington, D. C.

In Supreme Court of the United States.

The American Life Insurance Company
vs.
The Town of Bruce.
No. 272.

Brief of P. Phillips, Samuel Richolson and W. Hallett Phillips for Defendant in Error.

This is an action against the Town of Bruce, State of Illinois, in which the plaintiff in error seeks to recover the sum of $6,000.

The declaration is on the common money counts, but the only evidence offered thereunder consists of certain coupons, in the following form:

$100.00. No. 1

The Town of Bruce, State of Illinois, will pay to the bearer on the 1st December, 1876, one hundred dollars at the Fourth National Bank, New York, being one year's interest on the bond numbered above.

M. C. Donaghu,
Town Clerk.

Thos. Croswell,
Supervisor.

The defendant filed a special plea denying all liability on the ground that certain conditions on which the bonds were issued were never complied with.

To this plea there was a replication setting up that the plaintiff was a bona fide holder of said coupons and bonds.

The replication was demurred to, and on argument before the Circuit Judge, the demurrer was sustained. The plaintiff failing to make further replication, and electing to abide by the replication herein, judgment was rendered in favor of defendant.

The only description of the bonds referred to in the coupons is to be found in the defendant's special plea (p. 18), in which it is recited that on 1st Dec'r, 1870, the Town-Clerk and Supervisor signed, sealed and delivered to the Plymouth, Kankakee & Pacific Railroad Company certain described bonds made payable to the "Kankakee and Illinois River Railroad Company or bearer, in each of which, among other things by way of recital, are the following words:

"This bond is issued by virtue of the laws of the State of Illinois, entitled "an act to incorporate the Kankakee and Illinois River Railroad Company, approved 15th April 1869," and "an act to fund and provide for paying railroad debts of counties, townships, cities and towns, in force April, 16th, 1869;" and we, the supervisor and town-clerk of the township of Bruce, do hereby certify that a special election was held in said township on the 7th September, 1869, at which special election, a majority of the legal voters participating at the same, voted "for subscription" to the capital stock of the Kankakee and Illinois River Railroad Company in the sum of $25,000, and to issue bonds of said township therefor, and that the special election was by the proper authorities then and there declared carried "for subscription," and that all other requirements of the law in relation to said special election were duly complied with."

By the 6th section of the act, 15th April, the railroad company is authorized to receive subscriptions.

The 16th section provides that townships, towns, and cities along the line of the road "may subscribe to the

capital stock of said Company in sums not exceeding $100,000, respectively." But no subscription shall be made until the same shall be submitted to the legal voters thereof. If the vote is in favor of the subscription, then the supervisor is to subscribe the amount voted, and shall execute to the Company in the name of the town. bonds bearing interest not to exceed 10 per cent., to run not less than 10, and not to exceed 25, years, the interest to be paid annually. And said bonds shall be delivered to the President of the Company, and shall be a pledge upon the revenues of such Territories.

The act, 16th April, passed over the Governor's veto, provides, in its 7th section, as follows:

"SECTION 7. And it shall not be lawful to register any bonds under the provisions of this act, or to receive any of the benefits or advantages to be derived from this act, until after the railroad, in aid of the construction of which the debt was incurred, shall have been completed near to, or in such county, town, township, city, or town, and cars shall have run thereon; and none of the benefits, advantages, or provisions of this act shall apply to any debt, unless the subscription or donation creating such debt was first submitted to an election of the legal voters of said county, township, city, or town, under the provisions of the laws of this State, and a majority of the legal voters living in said county, township, city, or town were in favor of such aid, subscription, or donation: *and any county, township, city, or town* shall *have the right, upon making any subscription or donation to any railroad company, to prescribe the conditions upon which such bonds, subscriptions, or donations shall be made; and such bonds, subscriptions, or donations shall not be valid and binding until such conditions precedent shall have been complied with.* And the presiding judge of the county court, or the supervisors of the townships, or the executive officer of the city or town that shall have issued

bonds to any railway or railways, immediately upon the completion of the same near to, into, or through such county, township, city, or town, as may have been agreed upon, and the running of the cars thereon, shall certify under oath that all the preliminary conditions in this act required to be done to authorize the registration of such bonds, and to entitle them to the benefits of this act have been complied with, and shall transmit the same to the State auditor, with a statement of the date, amount, number, maturity, and rate of interest of such bonds, and to what company and under what law issued, and thereupon the said bonds shall be subject to registration by the State auditor as hereinbefore provided."

The special plea, after reciting the provisions in the above section (marked in italics), which declares that the validity of the bonds to be dependent on compliance with the conditions precedent, makes these averments:

That the Railrond Company on 25th May, 1869, entered upon their records and published to the world that the bonds in aid of its construction were only to issue in exchange for its stock, when a well assured contract for the iron was secured by the company, based upon the completion of the road-bed through said towns.

That the town of Bruce being notified of the resolution on 28th July, 1869, a petition of the citizens was addressed to the clerk, requesting that an election be ordered to decide whether a subscription should be made to the stock of said Company; that the petition expressly stated that the subscriptions and the bonds were to be subject to the following conditions.

First. That the road was to be so constructed as to pass through the town of Bruce.

Second. That the Company should locate and maintain a depot in said town.

Third. That the bonds were to be delivered in sums of $1,000 for every mile of road graded, and $1,000 for every mile of ties laid, and the balance when the road bed is ready for the iron.

Fourth. That the subscription should be void unless an agreement by the Company be made in one year after the date of voting, and the Company shall have formed satisfactory arrangements to connect said road with some eastern terminus.

The plea then avers that the election of 7th September 1869 was ordered and notices posted to determine whether the town would subscribe upon the conditions above stated; and this is the special election recited in said bonds.

All these conditions, it is averred, were broken, and for these defaults the plea maintains no recovery can be had in this action.

These two acts of April 15th and 16th, so far as they relate to the power to issue the bonds are in *pari materia* and may be construed as one act.

The former gives the authority to issue bonds without other condition than a vote of the people.

The latter seeing how often railroads, seeking for aid, hold "the word of promise to the ear and break it to the hope," gives authority to issue bonds whose validity depends upon the performance of conditions.

In adopting the course it did, the town understood perfectly they were issuing a security difficult of negotiation at anything like its face value. The Company with this knowledge, was willing to accept such security in exchange for its stock.

No case could more strongly illustrate the prudence

of the course adopted than the one before us; for if the town is now held responsible, it would be saddled with a burthensome debt, without the least consideration therefor, and for which its citizens had never voted.

It is very clear that if the suit was by the Railroad Company no recovery could be had. Does the present suitor occupy a better position?

His replication confesses the defaults of the Company, set forth in the plea, and seeks to avoid its effect by alleging that he is a *bona fide* holder without notice.

The answer is, that he is not a *bona fide* holder, if he was legally put upon enquiry.

The bonds recite the act of 16th April, 1869, as also the act of 15th April, in virtue of which they were issued. This recital made it incumbent on those dealing with them to examine both acts and all their provisions.

Dealers in municipal bonds are chargeable (say the court) with notice of all the laws of the State granting power to make the bonds they find in the market.

Anthony v. *County of Jasper*, 101, U. S. 697.

Here the act of 16th April is specifically named in the bond itself, and if it had been examined, the plaintiff would have seen the authority for issuing bonds, whose validity was dependent upon the performance of conditions.

McClure v. *Township of Oxford*, 94, U. S. 432.

It is not to be presumed that with this notification a purchaser would give full value without inquiry. The more reasonable reference is, that he was aware of the conditions, and made the purchase at a diminished price, having confidence in the Company to comply with its engagements.

That the Legislature had the power to authorize the issue of the bonds in question, and to fix limits to their validity, cannot be denied.

The issue of the bonds was made subject to the approval of the voters whose property was to be bound for their payment. This was a fundamental requisition by the Legislature.

The conditions affixed by the town under Legislative authority, stand on the same ground as if directly imposed by the Legislature itself.

The plaintiff seeks to avoid the effect of the provision on the validity of the bonds, by the construction that it applied only to the right of *registration* under the Act.

That this construction cannot be supported will be seen by reference to the preceding sections of the Act taken in connection with the 7th.

The 1st section provides that when any county, &c., becomes indebted, by reason of aid granted to a railway whose line shall run near to, or into said county, &c., there shall be placed to the credit of said county, &c., the state taxes collected on the increased valuation of the property of said county, &c. These taxes to be applied to the bonded rail road debt as provided by subsequent sections.

By the 2d section, it is provided that the proper officer shall keep a registration book, and in order to receive the benefit of the Act, the bonds must be registered "by the holders thereof at the office of the auditor of public accounts."

Then comes the 7th section, which declares that "it shall not be lawful to register any bonds under the provisions of this act, or to receive any of the benefits, or advantages to be derived from this act, until after the railroad, in aid of the construction of which the debt was incurred, shall have been completed, near to or in such county, &c.

One other condition to registration was provided, to wit:

that the indebtedness must have been incurred by the assent of a majority of the legal voters.

Here we have all the requirements specifically set forth, by which the bondholders could secure the benefits of registration.

They do not touch the question of the validity of the bonds themselves.

The subject of registration being disposed of, the act proceeds with a distinct provision authorizing the prescribing of conditions upon which the bonds shall be made, and then declares the bonds shall not be valid or binding until such conditions precedent are complied with.

These words "valid or binding" can have, by proper construction, no reference to any other than the maker of the bond. They can not be used in reference to registration, for their validity and binding effect are wholly independent of registration.

Besides this, as already stated, the prerequisites for registration had already been declared.

We need no further discussion of this matter as the construction of this statute has been declared by the Supreme Court of the State in *Town of Eagle* vs. *Kohn*, 84 Ill., 292.

The bonds in this case were issued under the same acts, and the same ground for recovery was relied on as is now claimed, to wit, that the plaintiff was a *bona fide* holder.

This was held to be no sufficient answer to the plea, setting up that the conditions had not been complied with.

In the opinion, it is said—

"We do not think it is to be regarded that the conditions named were prerequisite to the making of the subscription and issuing of the bonds, and that they were to be complied with before the subscription could be made or the bonds issued; but only that the subscription and the bonds were to be subject to the conditions."

Again; "The words of the statute in their natural force apply to bonds under all circumstances in whosoever hands they may be. Courts are wont to allow, to such peremptory language of a statute, full force and effect, and when a statute expressly declares that negotiable security given under such circumstances shall be void, to hold them void even in the hands of a *bona fide* indorsee."

"The words of the statute in question, though not that the bonds shall be void, are, that they shall not be valid and binding, until the conditions are complied with. They are equally imperative to the degree named, as language declaring securities void. The bonds are not declared to be, to their whole extent, not valid and binding; but *are* declared to be, to a certain extent, not valid and binding; that is, until the conditions are complied with."

"To give full effect to the peremptory words of the statute, and from analogy to the principles and decisions which have been adverted to, we think the proper construction here is to hold that, by virtue of the express declaration of the statute, the bonds in question are not valid and binding, until the conditions named have been complied with, even in the hands of innocent holders without notice."

The decision of the highest tribunal of the State in the construction of the statute we submit is conclusive.

Rule of Decision.

It is not necessary now to elaborate the general question as to how far the Federal judiciary is bound to follow the decisions of the State courts.

This opens a wide field of discussion most interesting in its character, as touching the relation between the Federal and State Governments.

The exigency of the case before us requires us only to maintain that the decision of the highest tribunal of the State construing a *statute* of the State is obligatory on all other courts; and the fact that commercial paper is affected by it does not diminish its obligatory force.

This proposition is sustained by numerous decisions—the latest being:

Town of Ottawa vs. *Perkins*, 94 U. S., 260;
County of Cass vs. *Johnston*, 95 " 360;
Fairfield vs. *Gallatin*, 100 " 47;
Douglass vs. *County Pike*, 101 " 686.

In the last case, the Chief Justice thus declares the general proposition:

"As a rule, we treat the construction which the highest court of a State court has given the statute of the State as part of the statute, and govern ourselves accordingly. But when different constructions have been given at different times, we are not bound to follow the latest decision, if thereby contract rights which have accrued under earlier decisions will be injuriously affected."

The case of *Rowan* vs. *Russell* is then cited, in which TANEY, C. J., in asserting the same doctrine, says:

"Undoubtedly this court will always feel itself bound to respect the decisions of the State courts, and, *from the time they are made, regard them as conclusive in all cases upon the construction of their laws*. But we ought not give to them a retro-active effect and allow them to render invalid contracts entered into with citizens of other States, which, in the judgment of this court, were lawfully made."

This *exception* to the rule is based upon the proposition that the construction of the State court becomes a part of the statute itself as fully as if incorporated into it; and that a new construction is equivalent to a new statute which, under the constitution, cannot impair the obligation of the contract authorized by the law under which it was created.

The general obligatory effect of this construction by the State court on all other tribunals is thus demonstrated by the exception itself.

We have limited our reference to the decisions cited

above, because in all of them the rule is established in controversies involving the validity of municipal bonds.

It is asserted by the opposing counsel that the rule does not apply to such controversies; and for this purpose he refers to—

Supervisors vs. *Schenk*, 5 Wall., 772;
Pine Grove vs. *Talcot*, 19 " 677;
Venice vs. *Murdock*, 92 " 500.

The case last cited, lends no support whatever to his proposition. STRONG, J., in delivering the opinion, says:

"It is argued that the New York decisions are judicial constructions of a statute of that State, and therefore furnish the rule by which we must be guided. The argument would have force of the decision in fact presented a clear case of statutory construction—but they do not. They are not attempts at interpretations. They assert general principles. They do not assert that the statute so declares, or that such even is its implied requisition. There is therefore before us no such case of the construction of a State statute by State courts as require us to yield over our convictions of right."

"In *Supervisor* vs. *Schenk*, CLIFFORD, J., does say—the question of the validity of the bonds in the hands of innocent holders is a question of commercial law where the State adjudications, although entitled to great respect, do not furnish the rule of decision in this court."

But this is mere *obiter*. This is shown by the concluding sentence of the opinion—

"Prior decisions of the State court, were in accordance with the decision of the court, and as those decisions were supposed to be correct expositions of the law at the period when these bonds were issued, the latter adjudications cannot control the judgment in this case."

This disposed of the case on the well established exception without occasion for the announcement of the general proposition.

Besides this, it may be proper to remark that this general proposition is stated on the authority of the case of *Swift* vs. *Tyson*, alone.

In that case no question was made as to the construction of a *State statute*, but as to the effect of a State *decision* on commercial paper. The difference between the two cases is very apparent. It is well marked in the case of *Brooklyn & Newton R. R.* vs. *National Bank*, October Term, 1879, not yet reported.

The opinion in the case of *Pine Grove* vs. *Talcot* if taken as announcing the rule, independent of the peculiar facts enumerated therein, does give support to the proposition of the plaintiff in error.

It says—"Were we to yield in cases like this to the authority of the decisions of the courts of the respective States, we should abdicate the performance of one of the most important duties with which this tribunal is charged." It then adds:

"The question here under consideration, was fully considered by the Court in *Railroad Company* vs. *County of Ottoe*, 16 Wall., 667; and in *Olcott* vs. *The Supervisors*, 16 Wall., 678. We have no disposition to qualify anything said in those cases. They are conclusive in the case before us."

The Chief Justice did not set in this case, and MILLER and DAVIS Justices, dissented.

It is proper to say plainly that this emphatic declaration as to the "conclusiveness" of the cases cited, has no foundation to rest upon.

The case of the County of Ottoe, came up on a certificate of division. Neither in the arguments nor in the decision of the Court, is there one word indicating that any decision of the State Court was referred to, or that the question we are now discussing was even touched upon.

But worse than this. In the other case of *Olcott* vs. *The Supervisors*, in which STRONG, J., delivered the opinion, so far from deciding that the construction of a State statute by the highest tribunal of the State, was not obligatory when the litigation affects commercial securities, decides the reverse.

In that case County Bonds were in question, and in reference to a decision of the State Court, declaring the act authorizing the Bonds to be unconstitutional, STRONG, J., delivering the opinion, says:

"It is undoubtedly true in general, that this court does follow the decisions of the highest Court of the State respecting local questions peculiar to themselves or respecting the construction of their own constitutions and laws."

Referring then to the character of the State decision he says:

"It is relied on as having given a construction to the constitution of the State. Very plainly, however, such was not its character, or effect. The question considered by the court was not one of interpretation or construction. The meaning of no provision of the constitution was considered or declared, etc., etc."

We need not, however, further comment on the opinion in *Pine Grove* vs. *Talcot*, for as understood by the plaintiff in error, it is wholly inconsistent with the adjudications subsequently made, and must be considered as having been overruled.

The exigency of this case does not call on us to deter-

mine whether the rule which requires the Federal tribunal to follow the decisions of the State Court on the construction of a State statute, rest upon the *force* of the 34th section of the Judiciary Act, upon the principle of *comity* or the doctrine of *stare decisis*.

If, as has been repeatedly decided, the construction given by the State Court, to a statute of the State form, a part of the statute itself, then the court is bound by *force* of the act; for a *statute* is certainly a "*law*" of the state which the 34th section declares *shall be regarded* as the rule of decision."

We close this branch of the argument by citing from two decisions made by Chief Justice MARSHAL, as showing how carefully this important subject was treated in the earliest adjudications.

In *Coates* vs. *Muse*, the question as to the true construction of a State statute, was, for the first time presented. In deciding which, he held this language:

"It is always with much reluctance that I *break the way* in expounding the statute of a State; for the exposition of the acts of every Legislature is, I think, the peculiar and appropriate duty of the tribunals created by that Legislature; although if a case depending on a statute not yet construed by the appropriate tribunal, comes on to be tried, the judge is under the necessity of construing the statute, because it forms a part of the case, yet he would yield to this necessity only where it is real, and where the case depends upon the statute."

1 Brock, 543.

The same illustrious magistrate, who never failed to assert, in the fullest manner, the just powers of the Federal judiciary, a few years after, to wit, in 1825, in delivering the unanimous opinion of the court, in *Elmendorf* vs. *Taylor*, again said:

"This court has uniformly professed its disposition, in-

cases depending on the laws of a particular State, to adopt the construction which the courts of the State have given to those laws. This course is founded on the principle universally recognized—that the judicial department of every government, where such department exists, is the appropriate organ for construing the legislative acts of that government. Thus no court in the universe which professed to be governed by principle would, we presume, undertake to say that the courts of Great Britain, or of France, or of any other nation, had misunderstood their own statutes, and, therefore, erect itself into a tribunal which should correct such misunderstanding. We receive the construction given by the courts of the nation as the true sense of the law, and feel ourselves no more at liberty to depart from that construction than to depart from the words of the statute."

"On this principle, the construction given by this Court to the Constitution and laws of the United States, is received by all as the true construction; and on the same principle the construction given by the courts of the several States to the legislative acts of those States is received as true, unless they come in conflict with the Constitution, laws or treaties of the United States." 10 Wheat. 152.

That the present case presents the question of construction of the State statute and of nothing else is evident. "The question (say the Supreme Court) depends upon the provision of the statute of April 16, 1869, giving the right to prescribe the conditions upon which such bonds or subscription should be made, and declaring that such bonds or subscription "*shall not be valid or binding* until such condition precedent shall have been complied with." What scope is to be given thereto? "Is it to be confined in its operation to the railroad company to which the bonds shall issue or extend to innocent holders for value?"

It is true that this construction of the statute was made subsequent to the issue of the bonds. If it had been made before it would have entered into and formed a part of the contract.

But the fact that it was made subsequently does not affect the questions as to whether this Court is bound to follow it.

Such statutes can seldom ever come before the courts until the bonds are issued. It is then their constitutionality or construction is challenged.

The citizen who deals in such bonds must take the risk of an uninterpreted statute, and a foreigner is not entitled to occupy a better position.

In *Township Elmwood* vs. *Macey*, the decision of the State Court was held to be obligatory though made subsequent to the issue of the bonds.

92, U. S., 289.

We therefore submit that the judgment of the Circuit Court should be here affirmed.

P. PHILLIPS,
SAM'L RICHOLSON,
W. HALLETT PHILLIPS,
for Deft. in Error.